

(Pub. L. 89–10, title VII, §7306, as added Pub. L. 107–110, title VII, §701, Jan. 8, 2002, 115 Stat. 1946.)

#### PRIOR PROVISIONS

A prior section 7546, Pub. L. 89–10, title VII, §7306, as added Pub. L. 103–382, title I, §101, Oct. 20, 1994, 108 Stat. 3743, related to administrative provisions, prior to the general amendment of this subchapter by Pub. L. 107–110. See section 6966 of this title.

Prior sections 7547 to 7602 were omitted in the general amendment of this subchapter by Pub. L. 107–110.

Section 7547, Pub. L. 89–10, title VII, §7307, as added Pub. L. 103–382, title I, §101, Oct. 20, 1994, 108 Stat. 3743, related to uses of funds. See section 6967 of this title.

Section 7548, Pub. L. 89–10, title VII, §7308, as added Pub. L. 103–382, title I, §101, Oct. 20, 1994, 108 Stat. 3744, related to reports. See section 6968 of this title.

Section 7549, Pub. L. 89–10, title VII, §7309, as added Pub. L. 103–382, title I, §101, Oct. 20, 1994, 108 Stat. 3744, authorized appropriations.

Section 7571, Pub. L. 89–10, title VII, §7401, as added Pub. L. 103–382, title I, §101, Oct. 20, 1994, 108 Stat. 3744, related to release time. See section 6981 of this title.

Section 7572, Pub. L. 89–10, title VII, §7402, as added Pub. L. 103–382, title I, §101, Oct. 20, 1994, 108 Stat. 3744, related to acquisition or development of education technology.

Section 7573, Pub. L. 89–10, title VII, §7403, as added Pub. L. 103–382, title I, §101, Oct. 20, 1994, 108 Stat. 3744, related to notification of awards. See section 6982 of this title.

Section 7574, Pub. L. 89–10, title VII, §7404, as added Pub. L. 103–382, title I, §101, Oct. 20, 1994, 108 Stat. 3744, related to continued eligibility for grants.

Section 7575, Pub. L. 89–10, title VII, §7405, as added Pub. L. 103–382, title I, §101, Oct. 20, 1994, 108 Stat. 3744, related to coordination and reporting requirements. See section 6983 of this title.

Section 7601, Pub. L. 89–10, title VII, §7501, as added Pub. L. 103–382, title I, §101, Oct. 20, 1994, 108 Stat. 3745; amended Pub. L. 105–244, title I, §102(a)(6)(J), title IX, §901(d), Oct. 7, 1998, 112 Stat. 1619, 1828, defined terms. See section 7011 of this title.

Section 7602, Pub. L. 89–10, title VII, §7502, as added Pub. L. 103–382, title I, §101, Oct. 20, 1994, 108 Stat. 3748, related to regulations and parental notification. See sections 7012 and 7014 of this title.

### SUBCHAPTER VIII—IMPACT AID

#### PRIOR PROVISIONS

Provisions similar to those in this subchapter were contained in chapters 13 (§236 et seq.) and 19 (§631 et seq.) of this title prior to repeal by Pub. L. 103–382, §331.

#### § 7701. Purpose

In order to fulfill the Federal responsibility to assist with the provision of educational services to federally connected children in a manner that promotes control by local educational agencies with little or no Federal or State involvement, because certain activities of the Federal Government, such as activities to fulfill the responsibilities of the Federal Government with respect to Indian tribes and activities under section 571 of title 50, Appendix, place a financial burden on the local educational agencies serving areas where such activities are carried out, and to help such children meet challenging State standards, it is the purpose of this subchapter to provide financial assistance to local educational agencies that—

- (1) experience a substantial and continuing financial burden due to the acquisition of real property by the United States;

- (2) educate children who reside on Federal property and whose parents are employed on Federal property;

- (3) educate children of parents who are in the military services and children who live in low-rent housing;

- (4) educate heavy concentrations of children whose parents are civilian employees of the Federal Government and do not reside on Federal property; or

- (5) need special assistance with capital expenditures for construction activities because of the enrollments of substantial numbers of children who reside on Federal lands and because of the difficulty of raising local revenue through bond referendums for capital projects due to the inability to tax Federal property.

(Pub. L. 89–10, title VIII, §8001, as added Pub. L. 103–382, title I, §101, Oct. 20, 1994, 108 Stat. 3749; amended Pub. L. 106–398, §1 [[div. A], title XVIII, §1802], Oct. 30, 2000, 114 Stat. 1654, 1654A–368; Pub. L. 108–189, §2(f), Dec. 19, 2003, 117 Stat. 2866.)

#### PRIOR PROVISIONS

A prior section 8001 of Pub. L. 89–10 was classified to section 3351 of this title, prior to the general amendment of Pub. L. 89–10 by Pub. L. 103–382.

Another prior section 8001 of Pub. L. 89–10 was renumbered section 9001 and was classified to section 3381 of this title, prior to the general amendment of Pub. L. 89–10 by Pub. L. 103–382.

#### AMENDMENTS

2003—Pub. L. 108–189 substituted “section 571” for “section 574” in introductory provisions.

2000—Pub. L. 106–398, §1 [[div. A], title XVIII, §1802(1)], in introductory provisions, inserted “in a manner that promotes control by local educational agencies with little or no Federal or State involvement” after “educational services to federally connected children” and “, such as activities to fulfill the responsibilities of the Federal Government with respect to Indian tribes and activities under section 574 of title 50, Appendix,” after “certain activities of the Federal Government”.

Par. (4). Pub. L. 106–398, §1 [[div. A], title XVIII, §1802(2)], inserted “or” at end.

Pars. (5), (6). Pub. L. 106–398, §1 [[div. A], title XVIII, §1802(3)–(5)], redesignated par. (6) as (5), inserted “and because of the difficulty of raising local revenue through bond referendums for capital projects due to the inability to tax Federal property” before period at end, and struck out former par. (5) which read as follows: “experience sudden and substantial increases or decreases in enrollments because of military realignments; or”.

#### EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, §1 [[div. A], title XVIII, §1818], Oct. 30, 2000, 114 Stat. 1654, 1654A–389, provided that: “This title [amending this section and sections 1228, 7702, 7703, 7705, 7707, 7709 to 7713, and 7714 of this title, repealing section 7706 of this title, and enacting provisions set out as notes under sections 6301, 7703, and 7711 of this title], and the amendments made by this title, shall take effect on October 1, 2000, or the date of the enactment of this Act [Oct. 30, 2000], whichever occurs later.”

#### EFFECTIVE DATE

Pub. L. 103–382, §3(a)(1), Oct. 20, 1994, 108 Stat. 3518, provided that:

“(A) Title I [amending generally Pub. L. 89–10 (formerly chapter 47 of this title, now this chapter)] and the amendment made by title I of this Act shall take effect July 1, 1995, except that those provisions of title

I that apply to programs under title VIII (Impact Aid) of the Elementary and Secondary Education Act of 1965 [this subchapter], as amended by this Act, and to programs under such Act [this chapter] that are conducted on a competitive basis, shall be effective with respect to appropriations for use under such programs for fiscal year 1995 and for subsequent fiscal years.

“(B) Title VIII of the Elementary and Secondary Education Act of 1965 [this subchapter], as amended by title I of this Act, shall take effect on the date of the enactment of this Act [Oct. 20, 1994].”

**§ 7702. Payments relating to Federal acquisition of real property**

**(a) In general**

Where the Secretary, after consultation with any local educational agency and with the appropriate State educational agency, determines for a fiscal year ending prior to October 1, 2003—

(1) that the United States owns Federal property in the local educational agency, and that such property—

(A) has been acquired by the United States since 1938;

(B) was not acquired by exchange for other Federal property in the local educational agency which the United States owned before 1939; and

(C) had an assessed value (determined as of the time or times when so acquired) aggregating 10 percent or more of the assessed value of—

(i) all real property in the local educational agency (similarly determined as of the time or times when such Federal property was so acquired); or

(ii) all real property in the local educational agency as assessed in the first year preceding or succeeding acquisition, whichever is greater, only if—

(I) the assessment of all real property in the local educational agency is not made at the same time or times that such Federal property was so acquired and assessed; and

(II) State law requires an assessment be made of property so acquired; and

(2) that such agency is not being substantially compensated for the loss in revenue resulting from such ownership by increases in revenue accruing to the agency from the conduct of Federal activities with respect to such Federal property,

then such agency shall be eligible to receive the amount described in subsection (b) of this section.

**(b) Amount**

**(1) In general**

(A)(i)(I) Subject to subclauses (II) and (III), the amount that a local educational agency shall be paid under subsection (a) of this section for a fiscal year shall be calculated in accordance with paragraph (2).

(II) Except as provided in subclause (III), the Secretary may not reduce the amount of a payment under this section to a local educational agency for a fiscal year by (aa) the amount equal to the amount of revenue, if any, the agency received during the previous fiscal year from activities conducted on Fed-

eral property eligible under this section and located in a school district served by the agency, including amounts received from any Federal department or agency (other than the Department of Education) from such activities, by reason of receipt of such revenue, or (bb) any other amount by reason of receipt of such revenue.

(III) If the amount equal to the sum of (aa) the proposed payment under this section to a local educational agency for a fiscal year and (bb) the amount of revenue described in subclause (II)(aa) received by the agency during the previous fiscal year, exceeds the maximum amount the agency is eligible to receive under this section for the fiscal year involved, then the Secretary shall reduce the amount of the proposed payment under this section by an amount equal to such excess amount.

(ii) For purposes of clause (i), the amount of revenue that a local educational agency receives during the previous fiscal year from activities conducted on Federal property shall not include payments received by the agency from the Secretary of Defense to support—

(I) the operation of a domestic dependent elementary or secondary school; or

(II) the provision of a free public education to dependents of members of the Armed Forces residing on or near a military installation.

(B) If funds appropriated under section 7714(a) of this title are insufficient to pay the amount determined under subparagraph (A), the Secretary shall calculate the payment for each eligible local educational agency in accordance with subsection (h) of this section.

(C) Notwithstanding any other provision of this subsection, a local educational agency may not be paid an amount under this section that, when added to the amount such agency receives under section 7703(b) of this title, exceeds the maximum amount that such agency is eligible to receive for such fiscal year under section 7703(b)(1)(C) of this title, or the maximum amount that such agency is eligible to receive for such fiscal year under this section, whichever is greater.

**(2) Application of current levied real property tax rate**

In calculating the amount that a local educational agency is eligible to receive for a fiscal year, the Secretary shall apply the current levied real property tax rate for current expenditures levied by fiscally independent local educational agencies, or imputed for fiscally dependent local educational agencies, to the current annually determined aggregate assessed value of such acquired Federal property.

**(3) Determination of aggregate assessed value**

Such aggregate assessed value of such acquired Federal property shall be determined on the basis of the highest and best use of property adjacent to such acquired Federal property as of the time such value is determined, and provided to the Secretary, by the local official responsible for assessing the value of real property located in the jurisdic-

tion of such local educational agency for the purpose of levying a property tax.

**(c) Applicability to Tennessee Valley Authority Act**

For the purpose of this section, any real property with respect to which payments are being made under section 13 of the Tennessee Valley Authority Act of 1933 [16 U.S.C. 831l] shall not be regarded as Federal property.

**(d) Ownership by United States**

The United States shall be deemed to own Federal property for the purposes of this chapter, where—

(1) prior to the transfer of Federal property, the United States owned Federal property meeting the requirements of subparagraphs (A), (B), and (C) of subsection (a)(1) of this section; and

(2) the United States transfers a portion of the property referred to in paragraph (1) to another nontaxable entity, and the United States—

(A) restricts some or any construction on such property;

(B) requires that the property be used in perpetuity for the public purposes for which the property was conveyed;

(C) requires the grantee of the property to report to the Federal Government (or its agent) regarding information on the use of the property;

(D) except with the approval of the Federal Government (or its agent), prohibits the sale, lease, assignment, or other disposal of the property unless such sale, lease, assignment, or other disposal is to another eligible government agency; and

(E) reserves to the Federal Government a right of reversion at any time the Federal Government (or its agent) deems it necessary for the national defense.

**(e) Local educational agency containing Forest Service land and serving certain counties**

Beginning with fiscal year 1995, a local educational agency shall be deemed to meet the requirements of subsection (a)(1)(C) of this section if such local educational agency meets the following requirements:

**(1) Acreage and acquisition by the Forest Service**

The local educational agency serves a school district that contains between 20,000 and 60,000 acres of land that has been acquired by the Forest Service of the Department of Agriculture between 1915 and 1990, as demonstrated by written evidence from the Forest Service satisfactory to the Secretary.

**(2) County charter**

The local educational agency serves a county chartered under State law in 1875 or 1890.

**(f) Special rule**

(1) Beginning with fiscal year 1994, and notwithstanding any other provision of law limiting the period during which fiscal year 1994 funds may be obligated, the Secretary shall treat the local educational agency serving the Wheatland R-II School District, Wheatland,

Missouri, as meeting the eligibility requirements of section 2(a)(1)(C) of the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such section was in effect on the day preceding October 20, 1994) (20 U.S.C. 237(a)(1)(C)) or subsection (a)(1)(C) of this section.

(2) For each fiscal year beginning with fiscal year 1999, the Secretary shall treat the Webster School District, Day County, South Dakota as meeting the eligibility requirements of subsection (a)(1)(C) of this section.

(3) For each fiscal year beginning with fiscal year 2000, the Secretary shall treat the Central Union, California; Island, California; Hill City, South Dakota; and Wall, South Dakota local educational agencies as meeting the eligibility requirements of subsection (a)(1)(C) of this section.

(4) For the purposes of payments under this section for each fiscal year beginning with fiscal year 2000, the Secretary shall treat the Hot Springs, South Dakota local educational agency as if it had filed a timely application under this section for fiscal year 1994 if the Secretary has received the fiscal year 1994 application, as well as Exhibits A and B not later than December 1, 1999.

(5) For purposes of payments under this section for each fiscal year beginning with fiscal year 2000, the Secretary shall treat the Hue-neme, California local educational agency as if it had filed a timely application under this section if the Secretary has received the fiscal year 1995 application not later than December 1, 1999.

**(g) Former districts**

**(1) In general**

Where the school district of any local educational agency described in paragraph (2) is formed at any time after 1938 by the consolidation of two or more former school districts, such agency may elect (at any time such agency files an application under section 7705 of this title) for any fiscal year after fiscal year 1994 to have (A) the eligibility of such local educational agency, and (B) the amount which such agency shall be eligible to receive, determined under this section only with respect to such of the former school districts comprising such consolidated school districts as such agency shall designate in such election.

**(2) Eligible local educational agencies**

A local educational agency referred to in paragraph (1) is any local educational agency that, for fiscal year 1994 or any preceding fiscal year, applied for and was determined eligible under section 2(c) of the Act of September 30, 1950 (Public Law 874, 81st Congress) as such section was in effect for such fiscal year.

**(h) Payments with respect to fiscal years in which insufficient funds are appropriated**

For any fiscal year for which the amount appropriated under section 7714(a) of this title is insufficient to pay to each eligible local educational agency the full amount determined under subsection (b) of this section, the Secretary shall make payments to each local educational agency under this section as follows:

**(1) Foundation payments for pre-1995 recipients****(A) In general**

The Secretary shall first make a foundation payment to each local educational agency that is eligible to receive a payment under this section for the fiscal year involved and that filed, or has been determined pursuant to statute to have filed a timely application, and met, or has been determined pursuant to statute to meet, the eligibility requirements of section 2(a)(1)(C) of the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such section was in effect on the day preceding October 20, 1994) for any of the fiscal years 1989 through 1994.

**(B) Amount**

The amount of a payment under subparagraph (A) for a local educational agency shall be equal to 38 percent of the local educational agency's maximum entitlement amount under section 2 of the Act of September 30, 1950, for fiscal year 1994 (or if the local educational agency did not meet, or has not been determined pursuant to statute to meet, the eligibility requirements of section 2(a)(1)(C) of the Act of September 30, 1950 for fiscal year 1994, the local educational agency's maximum entitlement amount under such section 2 for the most recent fiscal year preceding 1994).

**(C) Insufficient appropriations**

If the amount appropriated under section 7714(a) of this title is insufficient to pay the full amount determined under this paragraph for all eligible local educational agencies for the fiscal year, then the Secretary shall ratably reduce the payment to each local educational agency under this paragraph.

**(2) Payments for 1995 recipients****(A) In general**

From any amounts remaining after making payments under paragraph (1) for the fiscal year involved, the Secretary shall make a payment to each eligible local educational agency that received a payment under this section for fiscal year 1995, or whose application under this section for fiscal year 1995 was determined pursuant to statute to be timely filed for purposes of payments for subsequent fiscal years.

**(B) Amount**

The amount of a payment under subparagraph (A) for a local educational agency shall be determined as follows:

(i) Calculate the difference between the amount appropriated to carry out this section for fiscal year 1995 and the total amount of foundation payments made under paragraph (1) for the fiscal year.

(ii) Determine the percentage share for each local educational agency described in subparagraph (A) by dividing the assessed value of the Federal property of the local educational agency for fiscal year 1995 determined in accordance with subsection

(b)(3) of this section, by the total eligible national assessed value of the eligible Federal property of all such local educational agencies for fiscal year 1995, as so determined.

(iii) Multiply the percentage share described in clause (ii) for the local educational agency by the amount determined under clause (i).

**(3) Subsection (i) recipients**

From any funds remaining after making payments under paragraphs (1) and (2) for the fiscal year involved, the Secretary shall make payments in accordance with subsection (i) of this section.

**(4) Remaining funds**

From any funds remaining after making payments under paragraphs (1), (2), and (3) for the fiscal year involved—

(A) the Secretary shall make a payment to each local educational agency that received a foundation payment under paragraph (1) for the fiscal year involved in an amount that bears the same relation to 25 percent of the remainder as the amount the local educational agency received under paragraph (1) for the fiscal year involved bears to the amount all local educational agencies received under paragraph (1) for the fiscal year involved; and

(B) the Secretary shall make a payment to each local educational agency that is eligible to receive a payment under this section for the fiscal year involved in an amount that bears the same relation to 75 percent of the remainder as a percentage share determined for the local educational agency (by dividing the maximum amount that the agency is eligible to receive under subsection (b) of this section by the total of the maximum amounts for all such agencies) bears to the percentage share determined (in the same manner) for all local educational agencies eligible to receive a payment under this section for the fiscal year involved, except that, for the purpose of calculating a local educational agency's maximum amount under subsection (b) of this section, data from the most current fiscal year shall be used.

**(i) Special payments****(1) In general**

For any fiscal year beginning with fiscal year 2000 for which the amount appropriated to carry out this section exceeds the amount so appropriated for fiscal year 1996 and for which subsection (b)(1)(B) of this section applies, the Secretary shall use the remainder described in subsection (h)(3) of this section for the fiscal year involved (not to exceed the amount equal to the difference between (A) the amount appropriated to carry out this section for fiscal year 1997 and (B) the amount appropriated to carry out this section for fiscal year 1996) to increase the payment that would otherwise be made under this section to not more than 50 percent of the maximum amount determined under subsection (b) of this section for any local educational agency described in paragraph (2).

**(2) Local educational agency described**

A local educational agency described in this paragraph is a local educational agency that—

(A) received a payment under this section for fiscal year 1996;

(B) serves a school district that contains all or a portion of a United States military academy;

(C) serves a school district in which the local tax assessor has certified that at least 60 percent of the real property is federally owned; and

(D) demonstrates to the satisfaction of the Secretary that such agency's per-pupil revenue derived from local sources for current expenditures is not less than that revenue for the preceding fiscal year.

**(j) Repealed. Pub. L. 107-110, title VIII, § 801(d), Jan. 8, 2002, 115 Stat. 1948****(k) Special rule**

For purposes of payments under this section for each fiscal year beginning with fiscal year 1998—

(1) the Secretary shall, for the Stanley County, South Dakota local educational agency, calculate payments as if subsection (e) of this section had been in effect for fiscal year 1994; and

(2) the Secretary shall treat the Delaware Valley, Pennsylvania local educational agency as if it had filed a timely application under section 2 of Public Law 81-874 for fiscal year 1994.

**(l) Prior year data**

Notwithstanding any other provision of this section, in determining the eligibility of a local educational agency for a payment under subsection (b) or (h)(4)(B) of this section for a fiscal year, and in calculating the amount of such payment, the Secretary—

(1) shall use data from the prior fiscal year with respect to the Federal property involved, including data with respect to the assessed value of the property and the real property tax rate for current expenditures levied against or imputed to the property; and

(2) shall use data from the second prior fiscal year with respect to determining the amount of revenue referred to in subsection (b)(1)(A)(i) of this section.

**(m) Eligibility****(1) Old Federal property**

Except as provided in paragraph (2), a local educational agency that is eligible to receive a payment under this section for Federal property acquired by the Federal Government, before October 30, 2000, shall be eligible to receive the payment only if the local educational agency submits an application for a payment under this section not later than 7 years after October 30, 2000.

**(2) Combined Federal property**

A local educational agency that is eligible to receive a payment under this section for Federal property acquired by the Federal Government before October 30, 2000, shall be eligible to receive the payment if—

(A) the Federal property, when combined with other Federal property in the school district served by the local educational agency acquired by the Federal Government after October 30, 2000, meets the requirements of subsection (a) of this section; and

(B) the local educational agency submits an application for a payment under this section not later than 7 years after the date of acquisition of the Federal property acquired after October 30, 2000.

**(3) New Federal property**

A local educational agency that is eligible to receive a payment under this section for Federal property acquired by the Federal Government after October 30, 2000, shall be eligible to receive the payment only if the local educational agency submits an application for a payment under this section not later than 7 years after the date of acquisition.

**(n) Loss of eligibility****(1) In general**

Notwithstanding any other provision of this section, the Secretary shall make a minimum payment to a local educational agency described in paragraph (2), for the first fiscal year that the agency loses eligibility for assistance under this section as a result of property located within the school district served by the agency failing to meet the definition of Federal property under section 7713(5)(C)(iii) of this title, in an amount equal to 90 percent of the amount received by the agency under this section for the preceding year.

**(2) Local educational agency described**

A local educational agency described in this paragraph is an agency that—

(A) was eligible for, and received, a payment under this section for fiscal year 2002; and

(B) beginning in fiscal year 2003 or a subsequent fiscal year, is no longer eligible for payments under this section as provided for in subsection (a)(1)(C) of this section as a result of the transfer of the Federal property involved to a non-Federal entity.

(Pub. L. 89-10, title VIII, § 8002, as added Pub. L. 103-382, title I, § 101, Oct. 20, 1994, 108 Stat. 3749; amended Pub. L. 104-195, §§ 1, 6, Sept. 16, 1996, 110 Stat. 2379, 2382; Pub. L. 105-18, title VI, §§ 60004, 60006, June 12, 1997, 111 Stat. 214, 215; Pub. L. 105-78, title III, Nov. 13, 1997, 111 Stat. 1498; Pub. L. 105-277, div. A, § 101(f) [title III], Oct. 21, 1998, 112 Stat. 2681-337, 2681-365; Pub. L. 106-113, div. B, § 1000(a)(4) [title III], Nov. 29, 1999, 113 Stat. 1535, 1501A-247; Pub. L. 106-398, § 1 [[div. A], title XVIII, § 1803], Oct. 30, 2000, 114 Stat. 1654, 1654A-369; Pub. L. 107-110, title VIII, § 801(a)-(e), Jan. 8, 2002, 115 Stat. 1947, 1948; Pub. L. 108-447, div. F, title III, § 305, Dec. 8, 2004, 118 Stat. 3151.)

## REFERENCES IN TEXT

Section 2 of the Act of September 30, 1950 and section 2 of Public Law 81-874, referred to in subssecs. (f)(1), (g)(2), (h)(1)(A), (B), and (k)(2), means section 2 of act Sept. 30, 1950, ch. 1124, which was classified to section 237 of this title prior to repeal by Pub. L. 103-382, title III, § 331(b), Oct. 20, 1994, 108 Stat. 3965.

## PRIOR PROVISIONS

A prior section 8002 of Pub. L. 89-10 was renumbered section 9002 and was classified to section 3382 of this title, prior to the general amendment of Pub. L. 89-10 by Pub. L. 103-382.

## AMENDMENTS

2004—Subsec. (m). Pub. L. 108-447 substituted “7 years” for “5 years” in pars. (1), (2)(B), and (3).

2002—Subsec. (h)(1)(A). Pub. L. 107-110, §801(a)(1), substituted “and that filed, or has been determined pursuant to statute to have filed a timely application, and met, or has been determined pursuant to statute to meet, the eligibility requirements of section 2(a)(1)(C) of the Act of September 30, 1950” for “and was eligible to receive a payment under section 2 of the Act of September 30, 1950”.

Subsec. (h)(1)(B). Pub. L. 107-110, §801(a)(2), substituted “(or if the local educational agency did not meet, or has not been determined pursuant to statute to meet, the eligibility requirements of section 2(a)(1)(C) of the Act of September 30, 1950 for fiscal year 1994” for “(or if the local educational agency was not eligible to receive a payment under such section 2 for fiscal year 1994”.

Subsec. (h)(2)(A). Pub. L. 107-110, §801(b)(1), inserted before period at end “, or whose application under this section for fiscal year 1995 was determined pursuant to statute to be timely filed for purposes of payments for subsequent fiscal years”.

Subsec. (h)(2)(B)(ii). Pub. L. 107-110, §801(b)(2), substituted “for each local educational agency described in subparagraph (A)” for “for each local educational agency that received a payment under this section for fiscal year 1995”.

Subsec. (h)(4)(B). Pub. L. 107-110, §801(c), substituted “(by dividing the maximum amount that the agency is eligible to receive under subsection (b) of this section by the total of the maximum amounts for all such agencies)” for “(in the same manner as percentage shares are determined for local educational agencies under paragraph (2)(B)(ii))” and “, except that, for the purpose of calculating a local educational agency’s maximum amount under subsection (b) of this section” for “, except that for the purpose of calculating a local educational agency’s assessed value of the Federal property”.

Subsec. (j). Pub. L. 107-110, §801(d), struck out subsec. (j) which authorized additional assistance for certain local educational agencies impacted by Federal property acquisition.

Subsec. (n). Pub. L. 107-110, §801(e), added subsec. (n).  
2000—Subsec. (a). Pub. L. 106-398, §1 [[div. A], title XVIII, §1803(a)], substituted “2003” for “1999” in introductory provisions.

Subsec. (b)(1)(A)(i). Pub. L. 106-398, §1 [[div. A], title XVIII, §1803(b)(1)], designated existing provisions as subcl. (I), substituted “Subject to subclauses (II) and (III), the amount” for “The amount”, struck out “, except that such amount shall be reduced by the Secretary by an amount equal to the amount of revenue, if any, that such agency received during the previous fiscal year from activities conducted on such Federal property” after “in accordance with paragraph (2)”, and added subcls. (II) and (III).

Subsec. (b)(1)(B). Pub. L. 106-398, §1 [[div. A], title XVIII, §1803(b)(2)], substituted “shall calculate the payment for each eligible local educational agency in accordance with subsection (h) of this section” for “shall ratably reduce the payment to each eligible local educational agency”.

Subsec. (b)(1)(C). Pub. L. 106-398, §1 [[div. A], title XVIII, §1803(b)(3)], inserted before period at end “, or the maximum amount that such agency is eligible to receive for such fiscal year under this section, whichever is greater”.

Subsec. (h). Pub. L. 106-398, §1 [[div. A], title XVIII, §1803(c)], amended heading and text generally. Prior to amendment, subsec. (h) required the Secretary to pay

under subsec. (b) of this section to eligible local education agencies certain minimum amounts for fiscal years 1995 to 2000.

Subsec. (i). Pub. L. 106-398, §1 [[div. A], title XVIII, §1803(d)(2)], substituted “Special” for “Priority” in heading.

Subsec. (i)(1). Pub. L. 106-398, §1 [[div. A], title XVIII, §1803(d)(1)], amended heading and text of par. (1) generally. Prior to amendment, text read as follows: “Notwithstanding subsection (b)(1)(B) of this section, and for any fiscal year beginning with fiscal year 1997 for which the amount appropriated to carry out this section exceeds the amount so appropriated for fiscal year 1996—

“(A) the Secretary shall first use the excess amount (not to exceed the amount equal to the difference of (i) the amount appropriated to carry out this section for fiscal year 1997, and (ii) the amount appropriated to carry out this section for fiscal year 1996) to increase the payment that would otherwise be made under this section to not more than 50 percent of the maximum amount determined under subsection (b) of this section for any local educational agency described in paragraph (2); and

“(B) the Secretary shall use the remainder of the excess amount to increase the payments to each eligible local educational agency under this section.”

Subsec. (j)(2). Pub. L. 106-398, §1 [[div. A], title XVIII, §1803(e)], struck out “(A)” before “A local educational agency”, redesignated cls. (i) to (v) as subpars. (A) to (E), respectively, and inserted “and, at the time at which the agency is applying for a payment under this subsection, the agency does not have a military installation located within its geographic boundaries” before the semicolon at the end of subpar. (C).

Subsec. (l). Pub. L. 106-398, §1 [[div. A], title XVIII, §1803(f)], added subsec. (l).

Subsec. (m). Pub. L. 106-398, §1 [[div. A], title XVIII, §1803(g)], added subsec. (m).

1999—Subsec. (f)(3) to (5). Pub. L. 106-113 added pars. (3) to (5).

1998—Subsec. (f). Pub. L. 105-277 designated existing provisions as par. (1) and added par. (2).

Subsec. (k). Pub. L. 105-277 added subsec. (k).

1997—Subsec. (h)(1)(C). Pub. L. 105-18, §60004, added subpar. (C).

Subsec. (i). Pub. L. 105-18, §60006, amended heading and text of subsec. (i) generally. Prior to amendment, text read as follows: “Notwithstanding subsection (b)(1)(B) of this section, and for any fiscal year beginning with fiscal year 1997 for which the amount appropriated to carry out this section exceeds the amount so appropriated for fiscal year 1996, the Secretary shall first use such excess amount to increase the payment that would otherwise be made under this section to not more than 50 percent of the maximum amount determined under subsection (b) of this section for any local educational agency that—

“(1) received a payment under this section for fiscal year 1996;

“(2) serves a school district that contains all or a portion of a United States military academy;

“(3) serves a school district in which the local tax assessor has certified that at least 60 percent of the real property is federally owned; and

“(4) demonstrates to the satisfaction of the Secretary that such agency’s per-pupil revenue derived from local sources for current expenditures is not less than that revenue for the preceding fiscal year.”

Subsec. (j). Pub. L. 105-78 added subsec. (j).

1996—Subsecs. (g), (h). Pub. L. 104-195, §1, added subsecs. (g) and (h).

Subsec. (i). Pub. L. 104-195, §6, added subsec. (i).

## EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-110 effective Jan. 8, 2002, and effective with respect to appropriations for use under this subchapter for fiscal year 2002, see section 5 of Pub. L. 107-110, set out as an Effective Date note under section 6301 of this title.

**§ 7703. Payments for eligible federally connected children**

**(a) Computation of payment**

**(1) In general**

For the purpose of computing the amount that a local educational agency is eligible to receive under subsection (b) or (d) of this section for any fiscal year, the Secretary shall determine the number of children who were in average daily attendance in the schools of such agency, and for whom such agency provided free public education, during the preceding school year and who, while in attendance at such schools—

(A)(i) resided on Federal property with a parent employed on Federal property situated in whole or in part within the boundaries of the school district of such agency; or

(ii) resided on Federal property with a parent who is an official of, and accredited by, a foreign government and is a foreign military officer;

(B) resided on Federal property and had a parent on active duty in the uniformed services (as defined in section 101 of title 37);

(C) resided on Indian lands;

(D)(i) had a parent on active duty in the uniformed services (as defined by section 101 of title 37) but did not reside on Federal property; or

(ii) had a parent who is an official of, and has been accredited by, a foreign government and is a foreign military officer but did not reside on Federal property;

(E) resided in low-rent housing;

(F) resided on Federal property and is not described in subparagraph (A) or (B); or

(G) resided with a parent employed on Federal property situated—

(i) in whole or in part in the county in which such agency is located, or in whole or in part in such agency if such agency is located in more than one county; or

(ii) if not in such county, in whole or in part in the same State as such agency.

**(2) Determination of weighted student units**

For the purpose of computing the basic support payment under subsection (b) of this section, the Secretary shall calculate the total number of weighted student units for a local educational agency by adding together the results obtained by the following computations:

(A) Multiply the number of children described in subparagraphs (A) and (B) of paragraph (1) by a factor of 1.0.

(B) Multiply the number of children described in paragraph (1)(C) by a factor of 1.25.

(C) Multiply the number of children described in subparagraphs (A) and (B) of paragraph (1) by a factor of .35 if the local educational agency has—

(i) a number of such children described in such subparagraphs which exceeds 5,000; and

(ii) an average daily attendance for all children which exceeds 100,000.

(D) Multiply the number of children described in subparagraph (D) of paragraph (1) by a factor of .20.

(E) Multiply the number of children described in subparagraph (E) of paragraph (1) by a factor of .10.

(F) Multiply the number of children described in subparagraphs (F) and (G) of paragraph (1) by a factor of .05.

**(3) Special rule**

The Secretary shall only compute a payment for a local educational agency for children described in subparagraph (F) or (G) of paragraph (1) if the number of such children equals or exceeds 1,000 or such number equals or exceeds 10 percent of the total number of students in average daily attendance in the schools of such agency.

**(4) Military installation and Indian housing undergoing renovation or rebuilding**

**(A) In general**

(i) For purposes of computing the amount of a payment for a local educational agency for children described in paragraph (1)(D)(i), the Secretary shall consider such children to be children described in paragraph (1)(B) if the Secretary determines, on the basis of a certification provided to the Secretary by a designated representative of the Secretary of Defense, that such children would have resided in housing on Federal property in accordance with paragraph (1)(B) except that such housing was undergoing renovation or rebuilding on the date for which the Secretary determines the number of children under paragraph (1).

(ii) For purposes of computing the amount of a payment for a local educational agency that received a payment for children that resided on Indian lands in accordance with paragraph (1)(C) for the fiscal year prior to the fiscal year for which the local educational agency is making an application, the Secretary shall consider such children to be children described in paragraph (1)(C) if the Secretary determines, on the basis of a certification provided to the Secretary by a designated representative of the Secretary of the Interior or the Secretary of Housing and Urban Development, that such children would have resided in housing on Indian lands in accordance with paragraph (1)(C) except that such housing was undergoing renovation or rebuilding on the date for which the Secretary determines the number of children under paragraph (1).

**(B) Limitations**

(i)(I) Children described in paragraph (1)(D)(i) may be deemed to be children described in paragraph (1)(B) with respect to housing on Federal property undergoing renovation or rebuilding in accordance with subparagraph (A)(i) for a period not to exceed 3 fiscal years.

(II) The number of children described in paragraph (1)(D)(i) who are deemed to be children described in paragraph (1)(B) with respect to housing on Federal property undergoing renovation or rebuilding in accordance with subparagraph (A)(i) for any fiscal year may not exceed the maximum number of children who are expected to occupy that

housing upon completion of the renovation or rebuilding.

(ii)(I) Children that resided on Indian lands in accordance with paragraph (1)(C) for the fiscal year prior to the fiscal year for which the local educational agency is making an application may be deemed to be children described in paragraph (1)(C) with respect to housing on Indian lands undergoing renovation or rebuilding in accordance with subparagraph (A)(ii) for a period not to exceed 3 fiscal years.

(II) The number of children that resided on Indian lands in accordance with paragraph (1)(C) for the fiscal year prior to the fiscal year for which the local educational agency is making an application who are deemed to be children described in paragraph (1)(C) with respect to housing on Indian lands undergoing renovation or rebuilding in accordance with subparagraph (A)(ii) for any fiscal year may not exceed the maximum number of children who are expected to occupy that housing upon completion of the renovation or rebuilding.

**(5) Military “Build to Lease” program housing**

**(A) In general**

For purposes of computing the amount of payment for a local educational agency for children identified under paragraph (1), the Secretary shall consider children residing in housing initially acquired or constructed under the former section 2828(g) of title 10 (commonly known as the “Build to Lease” program), as added by section 801 of the Military Construction Authorization Act, 1984, to be children described under paragraph (1)(B) if the property described is within the fenced security perimeter of the military facility upon which such housing is situated.

**(B) Additional requirements**

If the property described in subparagraph (A) is not owned by the Federal Government, is subject to taxation by a State or political subdivision of a State, and thereby generates revenues for a local educational agency that is applying to receive a payment under this section, then the Secretary—

(i) shall require the local educational agency to provide certification from an appropriate official of the Department of Defense that the property is being used to provide military housing; and

(ii) shall reduce the amount of the payment under this section by an amount equal to the amount of revenue from such taxation received in the second preceding fiscal year by such local educational agency, unless the amount of such revenue was taken into account by the State for such second preceding fiscal year and already resulted in a reduction in the amount of State aid paid to such local educational agency.

**(b) Basic support payments; insufficient appropriations; State with only one local educational agency**

**(1) Basic support payments**

**(A) In general**

From the amount appropriated under section 7714(b) of this title for a fiscal year, the Secretary is authorized to make basic support payments to eligible local educational agencies with children described in subsection (a) of this section.

**(B) Eligibility**

A local educational agency is eligible to receive a basic support payment under subparagraph (A) for a fiscal year with respect to a number of children determined under subsection (a)(1) of this section only if the number of children so determined with respect to such agency amounts to the lesser of—

(i) at least 400 such children; or

(ii) a number of such children which equals at least 3 percent of the total number of children who were in average daily attendance, during such year, at the schools of such agency and for whom such agency provided free public education.

**(C) Maximum amount**

The maximum amount that a local educational agency is eligible to receive under this paragraph for any fiscal year is the sum of the total weighted student units, as computed under subsection (a)(2) of this section, multiplied by the greater of—

(i) one-half of the average per-pupil expenditure of the State in which the local educational agency is located for the third fiscal year preceding the fiscal year for which the determination is made;

(ii) one-half of the average per-pupil expenditure of all of the States for the third fiscal year preceding the fiscal year for which the determination is made;

(iii) the comparable local contribution rate certified by the State, as determined under regulations prescribed to carry out the Act of September 30, 1950 (Public Law 874, 81st Congress), as such regulations were in effect on January 1, 1994; or

(iv) the average per-pupil expenditure of the State in which the local educational agency is located, multiplied by the local contribution percentage.

**(D) Data**

If satisfactory data from the third preceding fiscal year are not available for any of the expenditures described in clause (i) or (ii) of subparagraph (C), the Secretary shall use data from the most recent fiscal year for which data that are satisfactory to the Secretary are available.

**(E) Special rule**

For purposes of determining the comparable local contribution rate under subparagraph (C)(iii) for a local educational agency described in section 222.39(c)(3) of title 34, Code of Federal Regulations, that

had its comparable local contribution rate for fiscal year 1998 calculated pursuant to section 222.39 of title 34, Code of Federal Regulations, the Secretary shall determine such comparable local contribution rate as the rate upon which payments under this subsection for fiscal year 2000 were made to the local educational agency adjusted by the percentage increase or decrease in the per pupil expenditure in the State serving the local educational agency calculated on the basis of the second most recent preceding school year compared to the third most recent preceding school year for which school year data are available.

**(F) Increase in local contribution rate due to unusual geographic factors**

If the current expenditures in those local educational agencies which the Secretary has determined to be generally comparable to the local educational agency for which a computation is made under subparagraph (C) are not reasonably comparable because of unusual geographical factors which affect the current expenditures necessary to maintain, in such agency, a level of education equivalent to that maintained in such other agencies, then the Secretary shall increase the local contribution rate for such agency under subparagraph (C)(iii) by such an amount which the Secretary determines will compensate such agency for the increase in current expenditures necessitated by such unusual geographical factors. The amount of any such supplementary payment may not exceed the per-pupil share (computed with regard to all children in average daily attendance), as determined by the Secretary, of the increased current expenditures necessitated by such unusual geographic factors.

(G) Beginning with fiscal year 2002, for the purpose of calculating a payment under this paragraph for a local educational agency whose local contribution rate was computed under subparagraph (C)(iii) for the previous year, the Secretary shall use a local contribution rate that is not less than 95 percent of the rate that the LEA received for the preceding year.

**(2) Basic support payments for heavily impacted local educational agencies**

**(A) In general**

(i) From the amount appropriated under section 7714(b) of this title for a fiscal year, the Secretary is authorized to make basic support payments to eligible heavily impacted local educational agencies with children described in subsection (a) of this section.

(ii) A local educational agency that receives a basic support payment under this paragraph for a fiscal year shall not be eligible to receive a basic support payment under paragraph (1) for that fiscal year.

**(B) Eligibility for continuing heavily impacted local educational agencies**

**(i) In general**

A heavily impacted local educational agency is eligible to receive a basic sup-

port payment under subparagraph (A) with respect to a number of children determined under subsection (a)(1) of this section if the agency—

(I) received an additional assistance payment under subsection (f) of this section (as such subsection was in effect on the day before October 30, 2000) for fiscal year 2000; and

(II)(aa) is a local educational agency whose boundaries are the same as a Federal military installation;

(bb) has an enrollment of children described in subsection (a)(1) of this section that constitutes a percentage of the total student enrollment of the agency which is not less than 35 percent, has a per-pupil expenditure that is less than the average per-pupil expenditure of the State in which the agency is located or the average per-pupil expenditure of all States (whichever average per-pupil expenditure is greater), except that a local educational agency with a total student enrollment of less than 350 students shall be deemed to have satisfied such per-pupil expenditure requirement, and has a tax rate for general fund purposes which is not less than 95 percent of the average tax rate for general fund purposes of local educational agencies in the State;

(cc) has an enrollment of children described in subsection (a)(1) of this section that constitutes a percentage of the total student enrollment of the agency which is not less than 30 percent, and has a tax rate for general fund purposes which is not less than 125 percent of the average tax rate for general fund purposes for comparable local educational agencies in the State;

(dd) has a total student enrollment of not less than 25,000 students, of which not less than 50 percent are children described in subsection (a)(1) of this section and not less than 6,000 of such children are children described in subparagraphs (A) and (B) of subsection (a)(1) of this section; or

(ee) meets the requirements of subsection (f)(2) of this section applying the data requirements of subsection (f)(4) of this section (as such subsections were in effect on the day before October 30, 2000).

**(ii) Loss of eligibility**

A heavily impacted local educational agency that met the requirements of clause (i) for a fiscal year shall be ineligible to receive a basic support payment under subparagraph (A) if the agency fails to meet the requirements of clause (i) for a subsequent fiscal year, except that such agency shall continue to receive a basic support payment under this paragraph for the fiscal year for which the ineligibility determination is made.

**(iii) Resumption of eligibility**

A heavily impacted local educational agency described in clause (i) that becomes ineligible under such clause for 1 or more

fiscal years may resume eligibility for a basic support payment under this paragraph for a subsequent fiscal year only if the agency meets the requirements of clause (i) for that subsequent fiscal year, except that such agency shall not receive a basic support payment under this paragraph until the fiscal year succeeding the fiscal year for which the eligibility determination is made.

**(C) Eligibility for new heavily impacted local educational agencies**

**(i) In general**

A heavily impacted local educational agency that did not receive an additional assistance payment under subsection (f) of this section (as such subsection was in effect on the day before October 30, 2000) for fiscal year 2000 is eligible to receive a basic support payment under subparagraph (A) for fiscal year 2002 and any subsequent fiscal year with respect to a number of children determined under subsection (a)(1) of this section only if the agency is a local educational agency whose boundaries are the same as a Federal military installation (or if the agency is a qualified local educational agency as described in clause (iv)), or the agency—

(I) has an enrollment of children described in subsection (a)(1) of this section that constitutes a percentage of the total student enrollment of the agency that—

(aa) is not less than 50 percent if such agency receives a payment on behalf of children described in subparagraphs (F) and (G) of such subsection; or

(bb) is not less than 40 percent if such agency does not receive a payment on behalf of such children;

(II)(aa) for a local educational agency that has a total student enrollment of 350 or more students, has a per-pupil expenditure that is less than the average per-pupil expenditure of the State in which the agency is located; or

(bb) for a local educational agency that has a total student enrollment of less than 350 students, has a per-pupil expenditure that is less than the average per-pupil expenditure of a comparable local education agency or three comparable local educational agencies in the State in which the local educational agency is located; and

(III) has a tax rate for general fund purposes that is at least 95 percent of the average tax rate for general fund purposes of comparable local educational agencies in the State.

**(ii) Resumption of eligibility**

A heavily impacted local educational agency described in clause (i) that becomes ineligible under such clause for 1 or more fiscal years may resume eligibility for a basic support payment under this paragraph for a subsequent fiscal year only if

the agency is a local educational agency whose boundaries are the same as a Federal military installation (or if the agency is a qualified local educational agency as described in clause (iv)), or meets the requirements of clause (i), for that subsequent fiscal year, except that such agency shall continue to receive a basic support payment under this paragraph for the fiscal year for which the ineligibility determination is made.

**(iii) Application**

With respect to the first fiscal year for which a heavily impacted local educational agency described in clause (i) applies for a basic support payment under subparagraph (A), or with respect to the first fiscal year for which a heavily impacted local educational agency applies for a basic support payment under subparagraph (A) after becoming ineligible under clause (i) for 1 or more preceding fiscal years, the agency shall apply for such payment at least 1 year prior to the start of that first fiscal year.

**(iv) Qualified local educational agency**

A qualified local educational agency described in this clause is an agency that meets the following requirements:

(I) The boundaries of the agency are the same as island property designated by the Secretary of the Interior to be property that is held in trust by the Federal Government.

(II) The agency has no taxing authority.

(III) The agency received a payment under paragraph (1) for fiscal year 2001.

**(D) Maximum amount for regular heavily impacted local educational agencies**

(i) Except as provided in subparagraph (E), the maximum amount that a heavily impacted local educational agency is eligible to receive under this paragraph for any fiscal year is the sum of the total weighted student units, as computed under subsection (a)(2) of this section and subject to clause (ii), multiplied by the greater of—

(I) four-fifths of the average per-pupil expenditure of the State in which the local educational agency is located for the third fiscal year preceding the fiscal year for which the determination is made; or

(II) four-fifths of the average per-pupil expenditure of all of the States for the third fiscal year preceding the fiscal year for which the determination is made.

(ii)(I) For a local educational agency with respect to which 35 percent or more of the total student enrollment of the schools of the agency are children described in subparagraph (D) or (E) (or a combination thereof) of subsection (a)(1) of this section, the Secretary shall calculate the weighted student units of such children for purposes of subsection (a)(2) of this section by multiplying the number of such children by a factor of 0.55.

(II) For a local educational agency that has an enrollment of 100 or fewer children

described in subsection (a)(1) of this section, the Secretary shall calculate the total number of weighted student units for purposes of subsection (a)(2) of this section by multiplying the number of such children by a factor of 1.75.

(III) For a local educational agency that does not qualify under (B)(i)(II)(aa)<sup>1</sup> of this subsection and has an enrollment of more than 100 but not more than 1,000 children described in subsection (a)(1) of this section, the Secretary shall calculate the total number of weighted student units for purposes of subsection (a)(2) of this section by multiplying the number of such children by a factor of 1.25.

**(E) Maximum amount for large heavily impacted local educational agencies**

(i)(I) Subject to clause (ii), the maximum amount that a heavily impacted local educational agency described in subclause (II) is eligible to receive under this paragraph for any fiscal year shall be determined in accordance with the formula described in paragraph (1)(C).

(II) A heavily impacted local educational agency described in this subclause is a local educational agency that has a total student enrollment of not less than 25,000 students, of which not less than 50 percent are children described in subsection (a)(1) of this section and not less than 6,000 of such children are children described in subparagraphs (A) and (B) of subsection (a)(1) of this section.

(ii) For purposes of calculating the maximum amount described in clause (i), the factor used in determining the weighted student units under subsection (a)(2) of this section with respect to children described in subparagraphs (A) and (B) of subsection (a)(1) of this section shall be 1.35.

**(F) Data**

For purposes of providing assistance under this paragraph the Secretary—

(i) shall use student, revenue, expenditure, and tax data from the third fiscal year preceding the fiscal year for which the local educational agency is applying for assistance under this paragraph; and

(ii) except as provided in subparagraph (C)(i)(I), shall include all of the children described in subparagraphs (F) and (G) of subsection (a)(1) of this section enrolled in schools of the local educational agency in determining (I) the eligibility of the agency for assistance under this paragraph, and (II) the amount of such assistance if the number of such children meet the requirements of subsection (a)(3) of this section.

**(G) Determination of average tax rates for general fund purposes**

For the purpose of determining average tax rates for general fund purposes for local educational agencies in a State under this paragraph (except under subparagraph

(C)(i)(II)(bb)), the Secretary shall use either—

(i) the average tax rate for general fund purposes for comparable local educational agencies, as determined by the Secretary in regulations; or

(ii) the average tax rate of all the local educational agencies in the State.

**(H) Eligibility for heavily impacted local educational agencies affected by privatization of military housing**

**(i) Eligibility**

For any fiscal year, a heavily impacted local educational agency that received a basic support payment under this paragraph for the prior fiscal year, but is ineligible for such payment for the current fiscal year under subparagraph (B), (C), (D), or (E), as the case may be, by reason of the conversion of military housing units to private housing described in clause (iii), shall be deemed to meet the eligibility requirements under subparagraph (B) or (C), as the case may be, for the period during which the housing units are undergoing such conversion.

**(ii) Amount of payment**

The amount of a payment to a heavily impacted local educational agency for a fiscal year by reason of the application of clause (i), and calculated in accordance with subparagraph (D) or (E), as the case may be, shall be based on the number of children in average daily attendance in the schools of such agency for the fiscal year and under the same provisions of subparagraph (D) or (E) under which the agency was paid during the prior fiscal year.

**(iii) Conversion of military housing units to private housing described**

For purposes of clause (i), “conversion of military housing units to private housing” means the conversion of military housing units to private housing units pursuant to subchapter IV of chapter 169 of title 10 or pursuant to any other related provision of law.

**(3) Payments with respect to fiscal years in which insufficient funds are appropriated**

**(A) In general**

For any fiscal year in which the sums appropriated under section 7714(b) of this title are insufficient to pay to each local educational agency the full amount computed under paragraphs (1) and (2), the Secretary shall make payments in accordance with this paragraph.

**(B) Learning opportunity threshold payments in lieu of payments under paragraph (1)**

(i) For fiscal years described in subparagraph (A), the Secretary shall compute a learning opportunity threshold payment (hereafter in this subchapter referred to as the “threshold payment”) in lieu of basic support payments under paragraph (1) by multiplying the amount obtained under

<sup>1</sup>So in original. Probably should be “paragraph (2)(B)(i)(II)(aa)”.

paragraph (1)(C) by the total percentage obtained by adding—

(I) the percentage of federally connected children for each local educational agency determined by calculating the fraction, the numerator of which is the total number of children described under subsection (a)(1) of this section and the denominator of which is the total number of children in average daily attendance at the schools served by such agency; and

(II) the percentage that funds under paragraph (1)(C) represent of the total budget of the local educational agency, determined by calculating the fraction, the numerator of which is the total amount of funds calculated for each local educational agency under this paragraph, and the denominator of which is the total current expenditures for such agency in the second preceding fiscal year for which the determination is made.

(ii) Such total percentage used to calculate threshold payments under paragraph (1) shall not exceed 100.

(iii) For the purpose of determining the percentages described in subclauses (I) and (II) of clause (i) that are applicable to the local educational agency providing free public education to students in grades 9 through 12 residing on Hanscom Air Force Base, Massachusetts, the Secretary shall consider only that portion of such agency's total enrollment of students in grades 9 through 12 when calculating the percentage under such subclause (I) and only that portion of the total current expenditures attributed to the operation of grades 9 through 12 in such agency when calculating the percentage under subclause (II).

(iv) In the case of a local educational agency that has a total student enrollment of fewer than 1,000 students and that has a per-pupil expenditure that is less than the average per-pupil expenditure of the State in which the agency is located or less than the average per-pupil expenditure of all the States, the total percentage used to calculate threshold payments under clause (i) shall not be less than 40 percent.

**(C) Learning opportunity threshold payments in lieu of payments under paragraph (2)**

For fiscal years described in subparagraph (A), the learning opportunity threshold payment in lieu of basic support payments under paragraph (2) shall be equal to the amount obtained under subparagraph (D) or (E) of paragraph (2), as the case may be.

**(D) Ratable distribution**

For fiscal years described in subparagraph (A), the Secretary shall make payments as a ratable distribution based upon the computations made under subparagraphs (B) and (C).

**(4) States with only one local educational agency**

**(A) In general**

In any of the 50 States of the United States in which there is only one local edu-

cational agency, the Secretary shall, for purposes of subparagraphs (B) and (C) of paragraph (1) or subparagraphs (B) through (D) of paragraph (2), as the case may be, paragraph (3) of this subsection, and subsection (e) of this section, consider each administrative school district in the State to be a separate local educational agency.

**(B) Computation of maximum amount of basic support payment and threshold payment**

In computing the maximum payment amount under paragraph (1)(C) or subparagraph (D) or (E) of paragraph (2), as the case may be, and the learning opportunity threshold payment under subparagraph (B) or (C) of paragraph (3), as the case may be, for an administrative school district described in subparagraph (A)—

(i) the Secretary shall first determine the maximum payment amount and the total current expenditures for the State as a whole; and

(ii) the Secretary shall then—

(I) proportionately allocate such maximum payment amount among the administrative school districts on the basis of the respective weighted student units of such districts; and

(II) proportionately allocate such total current expenditures among the administrative school districts on the basis of the respective number of students in average daily attendance at such districts.

**(5) Local educational agencies affected by removal of Federal property**

**(A) In general**

In computing the amount of a basic support payment under this subsection for a fiscal year for a local educational agency described in subparagraph (B), the Secretary shall meet the additional requirements described in subparagraph (C).

**(B) Local educational agency described**

A local educational agency described in this subparagraph is a local educational agency with respect to which Federal property (i) located within the boundaries of the agency, and (ii) on which one or more children reside who are receiving a free public education at a school of the agency, is transferred by the Federal Government to another entity in any fiscal year beginning on or after October 30, 2000, so that the property is subject to taxation by the State or a political subdivision of the State.

**(C) Additional requirements**

The additional requirements described in this subparagraph are the following:

(i) For each fiscal year beginning after the date on which the Federal property is transferred, a child described in subparagraph (B) who continues to reside on such property and who continues to receive a free public education at a school of the agency shall be deemed to be a child who resides on Federal property for purposes of computing under the applicable subpara-

graph of subsection (a)(1) of this section the amount that the agency is eligible to receive under this subsection.

(ii)(I) For the third fiscal year beginning after the date on which the Federal property is transferred, and for each fiscal year thereafter, the Secretary shall, after computing the amount that the agency is otherwise eligible to receive under this subsection for the fiscal year involved, deduct from such amount an amount equal to the revenue received by the agency for the immediately preceding fiscal year as a result of the taxable status of the former Federal property.

(II) For purposes of determining the amount of revenue to be deducted in accordance with subclause (I), the local educational agency—

(aa) shall provide for a review and certification of such amount by an appropriate local tax authority; and

(bb) shall submit to the Secretary a report containing the amount certified under item (aa).

**(c) Prior year data**

**(1) In general**

Except as provided in subsections (b)(1)(D), (b)(2), and paragraph (2), all calculations under this section shall be based on data for each local educational agency from not later than the fiscal year preceding the fiscal year for which the agency is making application for payment.

**(2) Exception**

Calculations for a local educational agency that is newly established by a State shall, for the first year of operation of such agency, be based on data from the fiscal year for which the agency is making application for payment.

**(d) Children with disabilities**

**(1) In general**

From the amount appropriated under section 7714(c) of this title for a fiscal year, the Secretary shall pay to each eligible local educational agency, on a pro rata basis, the amounts determined by—

(A) multiplying the number of children described in subparagraphs (A)(ii), (B) and (C) of subsection (a)(1) of this section who are eligible to receive services under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) by a factor of 1.0; and

(B) multiplying the number of children described in subparagraph (D) of subsection (a)(1) of this section who are eligible to receive services under such Act by a factor of 0.5.

**(2) Use of funds**

A local educational agency that receives funds under paragraph (1) shall use such funds to provide a free appropriate public education to children described in paragraph (1) in accordance with the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.).

**(e) Hold harmless**

**(1) In general**

Subject to paragraphs (2) and (3), the total amount the Secretary shall pay a local edu-

cational agency under subsection (b) of this section—

(A) for fiscal year 2001 shall not be less than 85 percent of the total amount that the local educational agency received under subsections (b) and (f) of this section for fiscal year 2000; and

(B) for fiscal year 2002 shall not be less than 70 percent of the total amount that the local educational agency received under subsections (b) and (f) of this section for fiscal year 2000.

**(2) Maximum amount**

The total amount provided to a local educational agency under subparagraph (A) or (B) of paragraph (1) for a fiscal year shall not exceed the maximum basic support payment amount for such agency determined under paragraph (1) or (2) of subsection (b) of this section, as the case may be.

**(3) Ratable reductions**

**(A) In general**

If the sums made available under this subchapter for any fiscal year are insufficient to pay the full amounts that all local educational agencies in all States are eligible to receive under paragraph (1) for such year, then the Secretary shall ratably reduce the payments to all such agencies for such year.

**(B) Additional funds**

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.

**(f) Other funds**

Notwithstanding any other provision of law, a local educational agency receiving funds under this section may also receive funds under section 386 of the National Defense Authorization Act for Fiscal Year 1993 or such section's successor authority.

**(g) Maintenance of effort**

A local educational agency may receive funds under subsection (b) of this section and section 7702 of this title for any fiscal year only if the State educational agency finds that either the combined fiscal effort per student or the aggregate expenditures of that agency and the State with respect to the provision of free public education by that agency for the preceding fiscal year was not less than 90 percent of such combined fiscal effort or aggregate expenditures for the second preceding fiscal year.

(Pub. L. 89-10, title VIII, §8003, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3752; amended Pub. L. 104-106, div. A, title X, §1074(f), (g), Feb. 10, 1996, 110 Stat. 448, 449; Pub. L. 104-195, §§3(a), 4(a), 5(a), (b), Sept. 16, 1996, 110 Stat. 2380-2382; Pub. L. 104-201, div. A, title III, §376, Sept. 23, 1996, 110 Stat. 2503; Pub. L. 104-208, div. A, title I, §101(e) [title III, §307(a)], Sept. 30, 1996, 110 Stat. 3009-233, 3009-262; Pub. L. 105-18, title VI, §60005(a), June 12, 1997, 111 Stat. 214; Pub. L. 105-78, title III, Nov. 13, 1997, 111 Stat. 1497; Pub. L. 106-398, §1 [[div. A], title XVIII,

§§1804(a), (b)(1), (c), 1805–1808(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–372, 1654A–374 to 1654A–382; Pub. L. 106–554, §1(a)(1) [title III, §323], Dec. 21, 2000, 114 Stat. 2763, 2763A–61; Pub. L. 107–20, title II, §2703(a), July 24, 2001, 115 Stat. 182; Pub. L. 107–110, title VIII, §802(a)(1), Jan. 8, 2002, 115 Stat. 1949; Pub. L. 107–206, title I, §§801, 802, Aug. 2, 2002, 116 Stat. 874; Pub. L. 107–279, title IV, §406(a), Nov. 5, 2002, 116 Stat. 1986; Pub. L. 107–314, div. A, title III, §344, Dec. 2, 2002, 116 Stat. 2515; Pub. L. 108–136, div. A, title V, §537(a), Nov. 24, 2003, 117 Stat. 1475; Pub. L. 111–84, div. A, title V, §536, Oct. 28, 2009, 123 Stat. 2293.)

## REFERENCES IN TEXT

Section 2828(g) of title 10 (commonly known as the “Build to Lease” program), as added by section 801 of the Military Construction Authorization Act, 1984, referred to in subsec. (a)(5)(A), means the subsection (g) added to section 2828 of Title 10, Armed Forces, by section 801 of Pub. L. 98–115, which was repealed by Pub. L. 102–190, div. B, title XXVIII, §2806(b), Dec. 5, 1991, 105 Stat. 1540.

Act of September 30, 1950, referred to in subsec. (b)(1)(C)(iii), is act Sept. 30, 1950, ch. 1124, 64 Stat. 1100, as amended, which was classified generally to chapter 13 (§236 et seq.) of this title, prior to repeal by Pub. L. 103–382, title III, §331(b), Oct. 20, 1994, 108 Stat. 3965. For complete classification of this Act to the Code, see Tables.

The Individuals with Disabilities Education Act, referred to in subsec. (d), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended, which is classified generally to chapter 33 (§1400 et seq.) of this title. For complete classification of this Act to the Code, see section 1400 of this title and Tables.

Section 386 of the National Defense Authorization Act for Fiscal Year 1993, referred to in subsec. (f), is section 386 of Pub. L. 102–484, which is set out as a note below.

## PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 238 of this title prior to repeal by Pub. L. 103–382, §331(b).

A prior section 8003 of Pub. L. 89–10 was renumbered section 9003 and was classified to section 3383 of this title, prior to the general amendment of Pub. L. 89–10 by Pub. L. 103–382.

## AMENDMENTS

2009—Subsec. (a)(2)(C)(i). Pub. L. 111–84 substituted “5,000” for “6,500”.

2003—Subsec. (b)(2)(H)(i), (ii). Pub. L. 108–136 added cls. (i) and (ii) and struck out former cls. (i) and (ii) which read as follows:

“(i) **ELIGIBILITY.**—For any fiscal year beginning with fiscal year 2003, a heavily impacted local educational agency that received a basic support payment under subparagraph (A) for the prior fiscal year, but is ineligible for such payment for the current fiscal year under subparagraph (B) or (C), as the case may be, by reason of the conversion of military housing units to private housing described in clause (iii), shall be deemed to meet the eligibility requirements under subparagraph (B) or (C), as the case may be, for the period during which the housing units are undergoing such conversion.

“(ii) **AMOUNT OF PAYMENT.**—The amount of a payment to a heavily impacted local educational agency for a fiscal year by reason of the application of clause (i), and calculated in accordance with subparagraph (D) or (E) (as the case may be), shall be based on the number of children in average daily attendance in the schools of such agency for the fiscal year.”

2002—Subsec. (b)(1)(G). Pub. L. 107–206, §802, added subpar. (G).

Subsec. (b)(2)(C)(i). Pub. L. 107–110, §802(a)(1)(A), inserted “(or if the agency is a qualified local educational agency as described in clause (iv))” after “Federal military installation” in introductory provisions.

Subsec. (b)(2)(C)(i)(II)(bb). Pub. L. 107–279 amended item (bb) generally. Prior to amendment, item (bb) read as follows: “for a local educational agency that has a total student enrollment of less than 350 students, has a per-pupil expenditure that is less than the average per-pupil expenditure of a comparable local educational agency in the State in which the agency is located; and”.

Subsec. (b)(2)(C)(ii). Pub. L. 107–110, §802(a)(1)(A), inserted “(or if the agency is a qualified local educational agency as described in clause (iv))” after “Federal military installation”.

Subsec. (b)(2)(C)(iv). Pub. L. 107–110, §802(a)(1)(B), added cl. (iv).

Subsec. (b)(2)(D)(ii)(III). Pub. L. 107–206, §801, amended subcl. (III) generally. Prior to amendment, subcl. (III) read as follows: “For a local educational agency that has an enrollment of more than 100 but not more than 750 children described in subsection (a)(1) of this section, the Secretary shall calculate the total number of weighted student units for purposes of subsection (a)(2) of this section by multiplying the number of such children by a factor of 1.25.”

Subsec. (b)(2)(H). Pub. L. 107–314 added subpar. (H).

Subsec. (b)(3)(B)(iv). Pub. L. 107–20 inserted “or less than the average per-pupil expenditure of all the States” after “of the State in which the agency is located”.

2000—Subsec. (a)(1). Pub. L. 106–398, §1 [[div. A], title XVIII, §1806(c)(1)], substituted “subsection (b) or (d)” for “subsection (b), (d), or (f)” in introductory provisions.

Subsec. (a)(2)(D). Pub. L. 106–398, §1 [[div. A], title XVIII, §1804(a)(1)(B)], substituted “subparagraph (D) of paragraph (1) by a factor of .20” for “subparagraphs (D) and (E) of paragraph (1) by a factor of .10”.

Subsec. (a)(2)(E), (F). Pub. L. 106–398, §1 [[div. A], title XVIII, §1804(a)(1)(A), (C)], added subpar. (E) and redesignated former subpar. (E) as (F).

Subsec. (a)(4). Pub. L. 106–398, §1 [[div. A], title XVIII, §1804(b)(1)], inserted “and Indian” after “Military installation” and “or rebuilding” after “renovation” in par. heading, designated existing provisions as subpar. (A)(i), inserted subpar. (A) heading, inserted “or rebuilding” after “undergoing renovation”, added cl. (ii) to subpar. (A) and added subpar. (B).

Subsec. (a)(5). Pub. L. 106–398, §1 [[div. A], title XVIII, §1804(c)], added par. (5).

Subsec. (b)(1)(C). Pub. L. 106–398, §1 [[div. A], title XVIII, §1806(c)(2)(A)], substituted “this paragraph” for “this subsection” in introductory provisions.

Subsec. (b)(1)(D), (E). Pub. L. 106–398, §1 [[div. A], title XVIII, §1804(a)(2)], added subpars. (D) and (E).

Subsec. (b)(1)(F). Pub. L. 106–398, §1 [[div. A], title XVIII, §1805], added subpar. (F).

Subsec. (b)(2). Pub. L. 106–398, §1 [[div. A], title XVIII, §1806(a)(2)], added par. (2). Former par. (2) redesignated (3).

Subsec. (b)(2)(F). Pub. L. 106–554, §1(a)(1) [title III, §323(a)], substituted “the Secretary—” for “the Secretary”, designated remaining provisions as cl. (i), and added cl. (ii).

Subsec. (b)(2)(G). Pub. L. 106–554, §1(a)(1) [title III, §323(b)], added subpar. (G).

Subsec. (b)(3). Pub. L. 106–398, §1 [[div. A], title XVIII, §1806(a)(1)], redesignated par. (2) as (3). Former par. (3) redesignated (4).

Subsec. (b)(3)(A). Pub. L. 106–398, §1 [[div. A], title XVIII, §1806(b)(1)], substituted “paragraphs (1) and (2)” for “paragraph (1)”.

Subsec. (b)(3)(B). Pub. L. 106–398, §1 [[div. A], title XVIII, §1806(b)(2)(A)], inserted “in lieu of payments under paragraph (1)” after “payments” in heading.

Subsec. (b)(3)(B)(i). Pub. L. 106–398, §1 [[div. A], title XVIII, §1806(b)(2)(B)], inserted “in lieu of basic support payments under paragraph (1)” before “by multiply-

ing” in introductory provisions and struck out “(not including amounts received under subsection (f) of this section)” after “under this paragraph” in subcl. (II).

Subsec. (b)(3)(B)(iv). Pub. L. 106-398, §1 [[div. A], title XVIII, §1806(b)(2)(C)], added cl. (iv).

Subsec. (b)(3)(C). Pub. L. 106-398, §1 [[div. A], title XVIII, §1806(b)(4)], added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (b)(3)(D). Pub. L. 106-398, §1 [[div. A], title XVIII, §1806(b)(3), (5)], redesignated subpar. (C) as (D) and substituted “computations made under subparagraphs (B) and (C)” for “computation made under subparagraph (B)”.

Subsec. (b)(4). Pub. L. 106-398, §1 [[div. A], title XVIII, §1806(a)(1)], redesignated par. (3) as (4).

Subsec. (b)(4)(A). Pub. L. 106-398, §1 [[div. A], title XVIII, §1806(c)(2)(B)(i)], substituted “subparagraphs (B) and (C) of paragraph (1) or subparagraphs (B) through (D) of paragraph (2), as the case may be, paragraph (3) of this subsection” for “paragraphs (1)(B), (1)(C), and (2) of this subsection”.

Subsec. (b)(4)(B). Pub. L. 106-398, §1 [[div. A], title XVIII, §1806(c)(2)(B)(ii)], in introductory provisions, inserted “or subparagraph (D) or (E) of paragraph (2), as the case may be,” after “paragraph (1)(C)” and substituted “subparagraph (B) or (C) of paragraph (3), as the case may be,” for “paragraph (2)(B)”.

Subsec. (b)(5). Pub. L. 106-398, §1 [[div. A], title XVIII, §1807], added par. (5).

Subsec. (c)(1). Pub. L. 106-398, §1 [[div. A], title XVIII, §1806(c)(3)], substituted “subsections (b)(1)(D), (b)(2), and paragraph (2)” for “paragraph (2) and subsection (f) of this section”.

Subsec. (e). Pub. L. 106-398, §1 [[div. A], title XVIII, §1804(a)(3)], amended heading and text of subsec. (e) generally. Prior to amendment, subsec. (e) required the Secretary to pay local education agencies under subsec. (b) of this section certain minimum amounts for fiscal years 1995 to 1999.

Subsec. (f). Pub. L. 106-398, §1 [[div. A], title XVIII, §§1806(c)(4), 1808(b)(1)], redesignated subsec. (h) as (f) and struck out heading and text of former subsec. (f) which required the Secretary to provide additional assistance to meet special circumstances relating to the provision of education in local educational agencies eligible to receive assistance under this section.

Subsec. (g). Pub. L. 106-398, §1 [[div. A], title XVIII, §1808(a), (b)(1)], redesignated subsec. (i) as (g) and struck out heading and text of former subsec. (g) which related to additional payments for local educational agencies with high concentrations of children with severe disabilities.

Subsec. (h). Pub. L. 106-398, §1 [[div. A], title XVIII, §1808(b)(1)], redesignated subsec. (h) as (f).

Pub. L. 106-398, §1 [[div. A], title XVIII, §1806(c)(5)], substituted “section 386 of the National Defense Authorization Act for Fiscal Year 1993” for “section 6 of the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such section was in effect on the day preceding October 20, 1994)”.

Subsec. (i). Pub. L. 106-398, §1 [[div. A], title XVIII, §1808(b)(1)], redesignated subsec. (i) as (g).

1997—Subsec. (f)(2)(A)(ii)(I). Pub. L. 105-78, which directed the amendment of section 8003(f)(2)(ii)(I) of the Elementary and Secondary Education Act of 1965 by substituting “25 percent of the total student enrollment of such agency. For purposes of this subclause, all students described in subsection (a)(1) of this section are used to determine eligibility, regardless of whether or not a local educational agency receives funds for these children from subsection (b) of this section:” for “35 percent” and all that follows through the semicolon, was executed by making the substitution for “35 percent of the total student enrollment of such agency:” in subsection (f)(2)(A)(ii)(I) of this section, to reflect the probable intent of Congress.

Subsec. (f)(4). Pub. L. 105-18 struck out hyphen after “Secretary” in introductory provisions, redesignated subpar. (A) as entire par. (4), inserted “expenditure,” after “revenue,” substituted period for semicolon after

“assistance under this subsection”, and struck out subpar. (B) which read as follows: “shall derive the per pupil expenditure amount for the fiscal year for which the local educational agency is applying for assistance under this subsection for the local educational agency’s comparable school districts by increasing or decreasing the per pupil expenditure data for the second fiscal year preceding the fiscal year for which the determination is made by the same percentage increase or decrease reflected between the per pupil expenditure data for the fourth fiscal year preceding the fiscal year for which the determination is made and the per pupil expenditure data for such second year.”

1996—Subsec. (a)(3). Pub. L. 104-201 substituted “1,000 or such number equals or exceeds 10 percent” for “2,000 and such number equals or exceeds 15 percent”.

Subsec. (a)(4). Pub. L. 104-195, §3(a), added par. (4).

Subsec. (b)(3). Pub. L. 104-195, §4(a), added par. (3).

Subsec. (f)(2)(A). Pub. L. 104-106, §1074(f)(1)(A), substituted “if such agency is eligible for a supplementary payment in accordance with subparagraph (B) or such agency” for “only if such agency” in introductory provisions.

Subsec. (f)(2)(D). Pub. L. 104-106, §1074(f)(1)(B), added subpar. (D).

Subsec. (f)(3)(A). Pub. L. 104-106, §1074(f)(2)(A)(i), inserted “(other than any amount received under paragraph (2)(B))” after “subsection” in introductory provisions.

Subsec. (f)(3)(A)(i). Pub. L. 104-208, §101(e) [title III, §307(a)(1), (5)], substituted in introductory provisions, “The Secretary, in conjunction with the local educational agency, shall first determine each of the following:” for “The Secretary shall first determine the greater of—” and inserted concluding provisions.

Subsec. (f)(3)(A)(i)(I). Pub. L. 104-208, §101(e) [title III, §307(a)(2), (3)], substituted “The average” for “the average” before “of the State” and substituted period for semicolon at end.

Pub. L. 104-106, §1074(f)(2)(A)(ii), struck out “or the average per-pupil expenditure of all the States” after “is located”.

Subsec. (f)(3)(A)(i)(II). Pub. L. 104-208, §101(e) [title III, §307(a)(2)], substituted “The average” for “the average”.

Pub. L. 104-208, §101(e) [title III, §307(a)(4)], which directed substitution of period for “: or”, was executed by making substitution for “; or” to reflect the probable intent of Congress.

Subsec. (f)(3)(A)(i)(III). Pub. L. 104-208, §101(e) [title III, §307(a)(2)], substituted “The average” for “the average”.

Subsec. (f)(3)(A)(ii). Pub. L. 104-106, §1074(f)(2)(A)(iii), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: “The Secretary shall next subtract from the amount determined under clause (i) the average amount of State aid per pupil received by the local educational agency.”

Subsec. (f)(3)(A)(iii). Pub. L. 104-195, §5(b)(1), inserted “, except as provided in subparagraph (C),” after “but” in introductory provisions.

Pub. L. 104-106, §1074(f)(2)(A)(iv), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: “The Secretary shall next multiply the amount determined under clause (ii) by the total number of students in average daily attendance at the schools of the local educational agency as determined by the Secretary under subsection (a)(1) of this section.”

Subsec. (f)(3)(B). Pub. L. 104-106, §1074(f)(2)(B), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: “With respect to payments under this subsection for a local educational agency described in clause (ii) or (iii) of paragraph (2)(A), the maximum amount of such payments shall be computed by taking the product of the average per-pupil expenditure in all States multiplied by 0.7, except that such amount may not exceed 125 percent of the average per-pupil expenditure in all local educational agencies in the State.”

Subsec. (f)(3)(C). Pub. L. 104-195, §5(b)(2), added subpar. (C).

Subsec. (f)(4). Pub. L. 104-195, §5(a), substituted “Data” for “Current year data” in heading, amended subpar. (A) generally, substituting present provisions for provisions which read “shall use student and revenue data from the fiscal year for which the local educational agency is applying for assistance under this subsection; and”, and in subpar. (B) substituted “the fiscal year for which the local educational agency is applying for assistance under this subsection” for “such year”.

Pub. L. 104-106, §1074(g), amended heading and text of par. (4) generally. Prior to amendment, text read as follows: “The Secretary shall, for purposes of providing assistance under this subsection, use—

“(A) student and revenue data from the fiscal year for which the local educational agency is applying for assistance under this subsection; and

“(B) the most recent data available which is adjusted to such fiscal year.”

#### EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108-136, div. A, title V, §537(b), Nov. 24, 2003, 117 Stat. 1475, provided that: “The amendment made by subsection (a) [amending this section] shall take effect beginning with basic support payments under section 8003(b)(2) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7703(b)(2)) for fiscal year 2003.”

#### EFFECTIVE DATE OF 2002 AMENDMENTS

Pub. L. 107-279, title IV, §406(b), Nov. 5, 2002, 116 Stat. 1987, provided that: “The amendment made by section 406(a) [amending this section] shall be effective on September 30, 2001, and shall apply with respect to fiscal year 2001, and all subsequent fiscal years.”

Amendment by Pub. L. 107-110 effective Jan. 8, 2002, and effective with respect to appropriations for use under this subchapter for fiscal year 2002, see section 5 of Pub. L. 107-110, set out as an Effective Date note under section 6301 of this title.

#### EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-398, §1 [[div. A], title XVIII, §1804(b)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A-375, provided that: “The amendments made by paragraph (1) [amending this section] shall apply with respect to payments to a local educational agency for fiscal years beginning before, on, or after the date of the enactment of this Act [Oct. 30, 2000].”

#### EFFECTIVE DATE OF 1997 AMENDMENTS

Title III of Pub. L. 105-78, Nov. 13, 1997, 111 Stat. 1497, provided in part that: “The amendment made by this proviso [amending this section] shall apply with respect to fiscal years beginning with fiscal year 1996”.

Section 60005(b) of Pub. L. 105-18 provided that: “The amendments made by subsection (a) [amending this section] shall apply with respect to fiscal years after fiscal year 1997.”

#### EFFECTIVE DATE OF 1996 AMENDMENTS

Section 101(e) [title III, §307(b)] of div. A of Pub. L. 104-208 provided that: “The amendments made by subsection (a) [amending this section] shall apply with respect to fiscal years beginning with fiscal year 1995.”

Section 3(b) of Pub. L. 104-195 provided that: “Paragraph (4) of section 8003(a) of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7703(a)(4)], as added by subsection (a), shall apply with respect to fiscal years after fiscal year 1995.”

Section 4(b) of Pub. L. 104-195 provided that: “Paragraph (3) of section 8003(b) of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7703(b)(3)], as added by subsection (a), shall apply with respect to fiscal years after fiscal year 1994.”

Section 5(c) of Pub. L. 104-195 provided that: “The amendments made by subsections (a) and (b) [amending this section] shall apply with respect to fiscal years after fiscal year 1996.”

#### TRANSITION PROVISIONS

Pub. L. 107-110, title VIII, §802(a)(2), Jan. 8, 2002, 115 Stat. 1949, provided that: “The Secretary shall consider an application for a payment under section 8003(b)(2) [20 U.S.C. 7703(b)(2)] for fiscal year 2002 from a qualified local educational agency described in section 8003(b)(2)(C)(iv), as added by paragraph (1), as meeting the requirements of section 8003(b)(2)(C)(iii), and shall provide a payment under section 8003(b)(2) for fiscal year 2002, if the agency submits to the Secretary an application for payment under such section not later than 30 days after the date of enactment of this Act [Jan. 8, 2002].”

#### ASSISTANCE TO LOCAL EDUCATIONAL AGENCIES THAT BENEFIT DEPENDENTS OF MEMBERS OF ARMED FORCES AND DEPARTMENT OF DEFENSE CIVILIAN EMPLOYEES

Pub. L. 102-484, div. A, title III, §386, Oct. 23, 1992, 106 Stat. 2394, as amended by Pub. L. 103-160, div. A, title III, §373(a), (b), Nov. 30, 1993, 107 Stat. 1635, 1636; Pub. L. 103-382, title III, §391(d), Oct. 20, 1994, 108 Stat. 4022; Pub. L. 104-106, div. A, title X, §1074(c)-(e), (h), Feb. 10, 1996, 110 Stat. 448, 449; Pub. L. 105-85, div. A, title III, §381(e), Nov. 18, 1997, 111 Stat. 1709; Pub. L. 106-65, div. A, title III, §351(e), Oct. 5, 1999, 113 Stat. 572, which required the Secretary of Defense, in consultation with the Secretary of Education, to provide financial assistance to certain local educational agencies in States, was repealed by Pub. L. 109-163, div. A, title V, §572(g), Jan. 6, 2006, 119 Stat. 3273. See section 7703b of this title.

#### NOTICE TO LOCAL AND STATE EDUCATIONAL AGENCIES OF ENROLLMENT CHANGES DUE TO BASE CLOSURES AND REALIGNMENTS

For provisions requiring Secretary of Defense to identify local educational agencies that will experience at least a 5-percent increase or 10-percent reduction in enrollment in number of dependent children of members of Armed Forces and of civilian employees of Department of Defense enrolled in schools under jurisdiction of such agencies during next academic year as a result of closure or realignment of a military installation, and to transmit notice of schedule of such closure or realignment to affected local and State educational agencies, see section 2833 of Pub. L. 101-189, set out as a note under section 2687 of Title 10, Armed Forces.

#### § 7703a. Impact aid for children with severe disabilities

##### (a) Payments

Subject to subsection (f) of this section, the Secretary of Defense shall make a payment for fiscal years after fiscal year 2001, to each local educational agency eligible to receive a payment for a child described in subparagraph (A)(ii), (B), (D)(i) or (D)(ii) of section 7703(a)(1) of this title that serves two or more such children with severe disabilities, for costs incurred in providing a free appropriate public education to each such child.

##### (b) Payment amount

The amount of the payment under subsection (a) of this section to a local educational agency for a fiscal year for each child referred to in such subsection with a severe disability shall be—

(1) the payment made on behalf of the child with a severe disability that is in excess of the average per pupil expenditure in the State in which the local educational agency is located; less

(2) the sum of the funds received by the local educational agency—

(A) from the State in which the child resides to defray the educational and related services for such child;

(B) under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) to defray the educational and related services for such child; and

(C) from any other source to defray the costs of providing educational and related services to the child which are received due to the presence of a severe disabling condition of such child.

**(c) Exclusions**

No payment shall be made under subsection (a) of this section on behalf of a child with a severe disability whose individual cost of educational and related services does not exceed—

(1) five times the national or State average per pupil expenditure (whichever is lower), for a child who is provided educational and related services under a program that is located outside the boundaries of the school district of the local educational agency that pays for the free appropriate public education of the student; or

(2) three times the State average per pupil expenditure, for a child who is provided educational and related services under a program offered by the local educational agency, or within the boundaries of the school district served by the local educational agency.

**(d) Ratable reduction**

If the amount available for a fiscal year for payments under subsection (a) of this section is insufficient to pay the full amount all local educational agencies are eligible to receive under such subsection, the Secretary of Defense shall ratably reduce the amounts of the payments made under such subsection to all local educational agencies by an equal percentage.

**(e) Report**

Each local educational agency desiring a payment under subsection (a) of this section shall report to the Secretary of Defense—

(1) the number of severely disabled children for which a payment may be made under this section; and

(2) a breakdown of the average cost, by placement (inside or outside the boundaries of the school district of the local educational agency), of providing education and related services to such children.

**(f) Payments subject to appropriation**

Payments shall be made for any period in a fiscal year under this section only to the extent that funds are appropriated specifically for making such payments for that fiscal year.

**(g) Local educational agency defined**

In this section, the term “local educational agency” has the meaning given that term in section 7713(9) of this title.

(Pub. L. 106-398, §1 [[div. A], title III, §363], Oct. 30, 2000, 114 Stat. 1654, 1654A-77.)

REFERENCES IN TEXT

The Individuals with Disabilities Education Act, referred to in subsec. (b)(2)(B), is title VI of Pub. L.

91-230, Apr. 13, 1970, 84 Stat. 175, as amended, which is classified generally to chapter 33 (§1400 et seq.) of this title. For complete classification of this Act to the Code, see section 1400 of this title and Tables.

CODIFICATION

Section was enacted as part of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, and not as part of the Elementary and Secondary Education Act of 1965 which comprises this chapter.

**§ 7703b. Assistance to local educational agencies that benefit dependents of members of the Armed Forces and Department of Defense civilian employees**

**(a) Assistance to schools with significant numbers of military dependent students**

**(1) Assistance authorized**

The Secretary of Defense shall provide financial assistance to an eligible local educational agency described in paragraph (2) if, without such assistance, the local educational agency will be unable (as determined by the Secretary of Defense in consultation with the Secretary of Education) to provide the students in the schools of the local educational agency with a level of education that is equivalent to the minimum level of education available in the schools of the other local educational agencies in the same State.

**(2) Eligible local educational agencies**

A local educational agency is eligible for assistance under this subsection for a fiscal year if at least 20 percent (as rounded to the nearest whole percent) of the students in average daily attendance in the schools of the local educational agency during the preceding school year were military dependent students counted under section 7703(a)(1) of this title.

**(b) Assistance to schools with enrollment changes due to base closures, force structure changes, or force relocations**

**(1) Assistance authorized**

To assist communities in making adjustments resulting from changes in the size or location of the Armed Forces, the Secretary of Defense shall provide financial assistance to an eligible local educational agency described in paragraph (2) if, during the period between the end of the school year preceding the fiscal year for which the assistance is authorized and the beginning of the school year immediately preceding that school year, the local educational agency had (as determined by the Secretary of Defense in consultation with the Secretary of Education) an overall increase or reduction of—

(A) not less than five percent in the average daily attendance of military dependent students in the schools of the local educational agency; or

(B) not less than 250 military dependent students in average daily attendance in the schools of the local educational agency.

**(2) Eligible local educational agencies**

A local educational agency is eligible for assistance under this subsection for a fiscal year if—

(A) the local educational agency is eligible for assistance under subsection (a) of this

section for the same fiscal year, or would have been eligible for such assistance if not for the reduction in military dependent students in schools of the local educational agency; and

(B) the overall increase or reduction in military dependent students in schools of the local educational agency is the result of one or more of the following:

- (i) The global rebasing plan of the Department of Defense.
- (ii) The official creation or activation of one or more new military units.
- (iii) The realignment of forces as a result of the base closure process.
- (iv) A change in the number of housing units on a military installation.

### (3) Calculation of amount of assistance

#### (A) Pro rata distribution

The amount of the assistance provided under this subsection to a local educational agency that is eligible for such assistance for a fiscal year shall be equal to the product obtained by multiplying—

- (i) the per-student rate determined under subparagraph (B) for that fiscal year; by
- (ii) the net of the overall increases and reductions in the number of military dependent students in schools of the local educational agency, as determined under paragraph (1).

#### (B) Per-student rate

For purposes of subparagraph (A)(i), the per-student rate for a fiscal year shall be equal to the dollar amount obtained by dividing—

- (i) the total amount of funds made available for that fiscal year to provide assistance under this subsection; by
- (ii) the sum of the overall increases and reductions in the number of military dependent students in schools of all eligible local educational agencies for that fiscal year under this subsection.

#### (C) Maximum amount of assistance

A local educational agency may not receive more than \$1,000,000 in assistance under this subsection for any fiscal year.

#### (4) Duration

Assistance may not be provided under this subsection after September 30, 2012.

### (c) Notification

Not later than June 30, 2006, and June 30 of each fiscal year thereafter for which funds are made available to carry out this section, the Secretary of Defense shall notify each local educational agency that is eligible for assistance under this section for that fiscal year of—

- (1) the eligibility of the local educational agency for the assistance, including whether the agency is eligible for assistance under either subsection (a) or (b) of this section or both subsections; and
- (2) the amount of the assistance for which the local educational agency is eligible.

### (d) Disbursement of funds

The Secretary of Defense shall disburse assistance made available under this section for a fis-

cal year not later than 30 days after the date on which notification to the eligible local educational agencies is provided pursuant to subsection (c) of this section for that fiscal year.

### (e) Funding for fiscal year 2006

Of the amount authorized to be appropriated pursuant to section 301(5)<sup>1</sup> for operation and maintenance for Defense-wide activities—

- (1) \$30,000,000 shall be available only for the purpose of providing assistance to local educational agencies under subsection (a) of this section; and
- (2) \$10,000,000 shall be available only for the purpose of providing assistance to local educational agencies under subsection (b) of this section.

### (f) Definitions

In this section:

(1) The term “base closure process” means the 2005 base closure and realignment process authorized by Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note) or any base closure and realignment process conducted after January 6, 2006, under section 2687 of title 10 or any other similar law enacted after January 6, 2006.

(2) The term “local educational agency” has the meaning given that term in section 7713(9) of this title.

(3) The term “military dependent students” refers to—

(A) elementary and secondary school students who are dependents of members of the Armed Forces; and

(B) elementary and secondary school students who are dependents of civilian employees of the Department of Defense.

(4) The term “State” means each of the 50 States and the District of Columbia.

(Pub. L. 109-163, div. A, title V, § 572, Jan. 6, 2006, 119 Stat. 3271; Pub. L. 111-84, div. A, title V, § 533, Oct. 28, 2009, 123 Stat. 2292.)

#### REFERENCES IN TEXT

Section 301(5), referred to in subsec. (e), is section 301(5) of Pub. L. 109-163, div. A, title III, 119 Stat. 3188, which is not classified to the Code.

The Defense Base Closure and Realignment Act of 1990, referred to in subsec. (f)(1), is part A of title XXIX of div. B of Pub. L. 101-510, Nov. 5, 1990, 104 Stat. 1808, as amended, which is set out as a note under section 2687 of Title 10, Armed Forces. For complete classification of this Act to the Code, see Tables.

#### CODIFICATION

Section is comprised of section 572 of Pub. L. 109-163. Subsec. (g) of section 572 of Pub. L. 109-163 repealed section 386 of Pub. L. 102-484, formerly set out as a note under section 7703 of this title.

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 2006, and not as part of the Elementary and Secondary Education Act of 1965 which comprises this chapter.

<sup>1</sup> See References in Text note below.

## AMENDMENTS

2009—Subsec. (b)(4). Pub. L. 111-84 substituted “September 30, 2012” for “September 30, 2010”.

PLAN AND AUTHORITY TO ASSIST LOCAL EDUCATIONAL AGENCIES EXPERIENCING GROWTH IN ENROLLMENT DUE TO FORCE STRUCTURE CHANGES, RELOCATION OF MILITARY UNITS, OR BASE CLOSURES AND REALIGNMENTS

Pub. L. 109-364, div. A, title V, §574, Oct. 17, 2006, 120 Stat. 2226, as amended by Pub. L. 110-181, div. A, title V, §573, Jan. 28, 2008, 122 Stat. 120; Pub. L. 110-417, [div. A], title V, §553, Oct. 14, 2008, 122 Stat. 4469; Pub. L. 112-81, div. A, title V, §573, Dec. 31, 2011, 125 Stat. 1427, provided that:

“(a) PLAN REQUIRED.—Not later than January 1, 2007, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report setting forth a plan to provide assistance to local educational agencies that experience growth in the enrollment of military dependent students as a result of any of the following events:

“(1) Force structure changes.

“(2) The relocation of a military unit.

“(3) The closure or realignment of military installations pursuant to defense base closure and realignment under the base closure laws.

“(b) ELEMENTS.—The report required by subsection (a), and each updated report required by subsection (c), shall include the following:

“(1) An identification, current as of the date of the report, of the total number of military dependent students who are anticipated to be arriving at or departing from military installations as a result of any event described in subsection (a), including—

“(A) an identification of the military installations affected by such arrivals and departures;

“(B) an estimate of the number of such students arriving at or departing from each such installation; and

“(C) the anticipated schedule of such arrivals and departures.

“(2) Such recommendations as the Office of Economic Adjustment of the Department of Defense considers appropriate for means of assisting affected local educational agencies in accommodating increases in enrollment of military dependent students as a result of any such event.

“(3) A plan for outreach to be conducted to affected local educational agencies, commanders of military installations, and members of the Armed Forces and civilian personnel of the Department of Defense regarding information on the assistance to be provided under the plan under subsection (a).

“(c) UPDATED REPORTS.—Not later than March 1, 2008, and annually thereafter to coincide with the submission of the budget of the President for a fiscal year under section 1105 of title 31, United States Code, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] an update of the report required by subsection (a).

“(d) TRANSITION OF MILITARY DEPENDENTS AMONG LOCAL EDUCATIONAL AGENCIES.—(1) The Secretary of Defense shall work collaboratively with the Secretary of Education in any efforts to ease the transitions of military dependent students from Department of Defense dependent schools to other schools and among schools of local educational agencies.

“(2) The Secretary of Defense may use funds of the Department of Defense Education Activity for the following purposes:

“(A) To share expertise and experience of the Activity with local educational agencies as military dependent students make the transitions described in paragraph (1), including transitions resulting from

the closure or realignment of military installations under a base closure law, global rebasing, and force restructuring.

“(B) To provide grant assistance programs for local educational agencies with military dependent students undergoing the transitions described in paragraph (1), including programs on the following:

“(i) Access to virtual and distance learning capabilities and related applications.

“(ii) Training for teachers.

“(iii) Academic strategies to increase academic achievement.

“(iv) Curriculum development.

“(v) Support for practices that minimize the impact of transition and deployment.

“(vi) Other appropriate services to improve the academic achievement of such students.

“(3) The authority provided by this subsection expires September 30, 2016.

“(e) DEFINITIONS.—In this section:

“(1) The term ‘base closure law’ has the meaning given that term in section 101 of title 10, United States Code.

“(2) The term ‘local educational agency’ has the meaning given that term in section 8013(9) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7713(9)).

“(3) The term ‘military dependent students’ refers to—

“(A) elementary and secondary school students who are dependents of members of the Armed Forces;

“(B) elementary and secondary school students who are dependents of civilian employees of the Department of Defense; and

“(C) elementary and secondary school students who are dependents of personnel who are not members of the Armed Forces or civilian employees of the Department of Defense but who are employed on Federal property.”

**§ 7704. Policies and procedures relating to children residing on Indian lands**

**(a) In general**

A local educational agency that claims children residing on Indian lands for the purpose of receiving funds under section 7703 of this title shall establish policies and procedures to ensure that—

(1) such children participate in programs and activities supported by such funds on an equal basis with all other children;

(2) parents of such children and Indian tribes are afforded an opportunity to present their views on such programs and activities, including an opportunity to make recommendations on the needs of those children and how the local educational agency may help such children realize the benefits of such programs and activities;

(3) parents and Indian tribes are consulted and involved in planning and developing such programs and activities;

(4) relevant applications, evaluations, and program plans are disseminated to the parents and Indian tribes; and

(5) parents and Indian tribes are afforded an opportunity to present their views to such agency regarding such agency’s general educational program.

**(b) Records**

A local educational agency that claims children residing on Indian lands for the purpose of receiving funds under section 7703 of this title

shall maintain records demonstrating such agency's compliance with the requirements contained in subsection (a) of this section.

**(c) Waiver**

A local educational agency that claims children residing on Indian lands for the purpose of receiving funds under section 7703 of this title shall not be required to comply with the requirements of subsections (a) and (b) of this section for any fiscal year with respect to any Indian tribe from which such agency has received a written statement that the agency need not comply with those subsections because the tribe is satisfied with the provision of educational services by such agency to such children.

**(d) Technical assistance and enforcement**

The Secretary shall—

(1) provide technical assistance to local educational agencies, parents, and Indian tribes to enable such agencies, parents, and tribes to carry out this section; and

(2) enforce this section through such actions, which may include the withholding of funds, as the Secretary determines to be appropriate, after affording the affected local educational agency, parents, and Indian tribe an opportunity to present their views.

**(e) Complaints**

**(1) In general**

(A) Any tribe, or its designee, which has students in attendance at a local educational agency may, in its discretion and without regard to the requirements of any other provision of law, file a written complaint with the Secretary regarding any action of a local educational agency taken pursuant to, or relevant to, the requirements of this section.

(B) Within ten working days from receipt of a complaint, the Secretary shall—

(i) designate a time and place for a hearing into the matters relating to the complaint at a location in close proximity to the local educational agency involved, or if the Secretary determines there is good cause, at some other location convenient to both the tribe, or its designee, and the local educational agency;

(ii) designate a hearing examiner to conduct the hearing; and

(iii) notify the affected tribe or tribes and the local educational agency involved of the time, place, and nature of the hearing and send copies of the complaint to the local educational agency and the affected tribe or tribes.

**(2) Hearing**

The hearing shall be held within 30 days of the designation of a hearing examiner and shall be open to the public. A record of the proceedings shall be established and maintained.

**(3) Evidence; recommendations; cost**

The complaining tribe, or its designee, and the local educational agency shall be entitled to present evidence on matters relevant to the complaint and to make recommendations concerning the appropriate remedial actions.

Each party to the hearing shall bear only its own costs in the proceedings.

**(4) Findings and recommendations**

Within 30 days of the completion of the hearing, the hearing examiner shall, on the basis of the record, make written findings of fact and recommendations concerning appropriate remedial action, if any, which should be taken. The hearing examiner's findings and recommendations, along with the hearing record, shall be forwarded to the Secretary.

**(5) Written determination**

Within 30 days of the Secretary's receipt of the findings, recommendations, and record, the Secretary shall, on the basis of the record, make a written determination of the appropriate remedial action, if any, to be taken by the local educational agency, the schedule for completion of the remedial action, and the reasons for the Secretary's decision.

**(6) Copies provided**

Upon completion of the Secretary's final determination, the Secretary shall provide the complaining tribe, or its designee, and the local educational agency with copies of the hearing record, the hearing examiner's findings and recommendations, and the Secretary's final determination. The final determination of the Secretary shall be subject to judicial review.

**(7) Consolidation**

In all actions under this subsection, the Secretary shall have discretion to consolidate complaints involving the same tribe or local educational agency.

**(8) Withholding**

If the local educational agency rejects the determination of the Secretary, or if the remedy required is not undertaken within the time established and the Secretary determines that an extension of the time established will not effectively encourage the remedy required, the Secretary shall withhold payment of all moneys to which such local agency is eligible under section 7703 of this title until such time as the remedy required is undertaken, except where the complaining tribe or its designee formally requests that such funds be released to the local educational agency, except that the Secretary may not withhold such moneys during the course of the school year if the Secretary determines that such withholding would substantially disrupt the educational programs of the local educational agency.

**(9) Rejection of determination**

If the local educational agency rejects the determination of the Secretary and a tribe exercises the option under section 1101(d) of the Education Amendments of 1978, to have education services provided either directly by the Bureau of Indian Affairs or by contract with the Bureau of Indian Affairs, any Indian students affiliated with that tribe who wish to remain in attendance at the local educational agency against whom the complaint which led to the tribal action under such subsection (d) of this section was lodged may be counted

with respect to that local educational agency for the purpose of receiving funds under section 7703 of this title. In such event, funds under such section shall not be withheld pursuant to paragraph (8) and no further complaints with respect to such students may be filed under paragraph (1).

**(f) Construction**

This section is based upon the special relationship between the Indian nations and the United States and nothing in this section shall be construed to relieve any State of any duty with respect to any citizens of that State.

(Pub. L. 89-10, title VIII, §8004, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3759.)

REFERENCES IN TEXT

Section 1101(d) of the Education Amendments of 1978, referred to in subsec. (e)(9), is section 1101(d) of Pub. L. 95-561, Nov. 1, 1978, 92 Stat. 2315, set out below.

PRIOR PROVISIONS

A prior section 8004 of Pub. L. 89-10 was renumbered section 9004 and was classified to section 3384 of this title, prior to the general amendment of Pub. L. 89-10 by Pub. L. 103-382.

CONTRACT AUTHORITY OF INDIAN TRIBES IF REMEDIAL ACTION IS NOT TAKEN; ELECTION TO HAVE SERVICES PROVIDED BY BUREAU SCHOOLS; SPECIAL REGULATIONS

Section 1101(d) of Pub. L. 95-561 directed Secretary of Health, Education, and Welfare, in cooperation with Commissioner of Education, within one year of Nov. 1, 1978, to promulgate special regulations which would provide that where a local educational agency had not undertaken the remedial action required by the Commissioner under 20 U.S.C. 240(b)(3)(C)(vi), the affected tribes could elect for the Bureau of Indian Affairs to provide educational services provided by the local educational agency.

**§ 7705. Application for payments under sections 7702 and 7703 of this title**

**(a) In general**

A local educational agency desiring to receive a payment under section 7702 or 7703 of this title shall—

- (1) submit an application for such payment to the Secretary; and
- (2) provide a copy of such application to the State educational agency.

**(b) Contents**

Each such application shall be submitted in such form and manner, and shall contain such information, as the Secretary may require, including—

- (1) information to determine the eligibility of the local educational agency for a payment and the amount of such payment; and
- (2) where applicable, an assurance that such agency is in compliance with section 7704 of this title (relating to children residing on Indian lands).

**(c) Deadline for submission**

The Secretary shall establish deadlines for the submission of applications under this section.

**(d) Approval**

**(1) In general**

The Secretary shall approve an application submitted under this section that—

(A) except as provided in paragraph (2), is filed by the deadline established under subsection (c) of this section; and

(B) otherwise meets the requirements of this subchapter.

**(2) Reduction in payment**

The Secretary shall approve an application filed not more than 60 days after a deadline established under subsection (c) of this section, or not more than 60 days after the date on which the Secretary sends written notice to the local educational agency pursuant to paragraph (3)(A), as the case may be, that otherwise meets the requirements of this subchapter, except that, notwithstanding section 7703(e) of this title, the Secretary shall reduce the payment based on such late application by 10 percent of the amount that would otherwise be paid.

**(3) Late applications**

**(A) Notice**

The Secretary shall, as soon as practicable after the deadline established under subsection (c) of this section, provide to each local educational agency that applied for a payment under section 7702 or 7703 of this title for the prior fiscal year, and with respect to which the Secretary has not received an application for a payment under either such section (as the case may be) for the fiscal year in question, written notice of the failure to comply with the deadline and instruction to ensure that the application is filed not later than 60 days after the date on which the Secretary sends the notice.

**(B) Acceptance and approval of late applications**

The Secretary shall not accept or approve any application of a local educational agency that is filed more than 60 days after the date on which the Secretary sends written notice to the local educational agency pursuant to subparagraph (A).

**(4) State application authority**

Notwithstanding any other provision of law, a State educational agency that had been accepted as an applicant for funds under section 3 of the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such section was in effect on the day preceding October 20, 1994) in fiscal year 1994 shall be permitted to continue as an applicant under the same conditions by which such agency made application during such fiscal year only if such State educational agency distributes all funds received for the students for which application is being made by such State educational agency to the local educational agencies providing educational services to such students.

(Pub. L. 89-10, title VIII, §8005, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3761; amended Pub. L. 106-398, §1 [[div. A], title XVIII, §1809], Oct. 30, 2000, 114 Stat. 1654, 1654A-382.)

REFERENCES IN TEXT

Section 3 of the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such section was in effect on the day preceding October 20, 1994), referred to in subsec.

(d)(4), means section 3 of act Sept. 30, 1950, ch. 1124, which was classified to section 238 of this title prior to repeal by Pub. L. 103-382, title III, §331(b), Oct. 20, 1994, 108 Stat. 3965.

#### PRIOR PROVISIONS

A prior section 8005 of Pub. L. 89-10 was renumbered section 9005 and was classified to section 3386 of this title, prior to the general amendment of Pub. L. 89-10 by Pub. L. 103-382.

#### AMENDMENTS

2000—Subsec. (d)(2). Pub. L. 106-398, §1 [[div. A], title XVIII, §1809(1)], inserted “, or not more than 60 days after the date on which the Secretary sends written notice to the local educational agency pursuant to paragraph (3)(A), as the case may be,” after “subsection (c) of this section”.

Subsec. (d)(3). Pub. L. 106-398, §1 [[div. A], title XVIII, §1809(2)], amended heading and text generally. Prior to amendment, text read as follows: “The Secretary shall not accept or approve any application that is filed more than 60 days after a deadline established under subsection (c) of this section.”

#### **§ 7706. Repealed. Pub. L. 106-398, §1 [[div. A], title XVIII, §1810], Oct. 30, 2000, 114 Stat. 1654, 1654A-383**

Section, Pub. L. 89-10, title VIII, §8006, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3762, related to payments for sudden and substantial increases in attendance of military dependents.

#### **§ 7707. Construction**

##### **(a) Construction payments authorized**

###### **(1) In general**

From 40 percent of the amount appropriated for each fiscal year under section 7714(e) of this title, the Secretary shall make payments in accordance with this subsection to each local educational agency that receives a basic support payment under section 7703(b) of this title for that fiscal year.

###### **(2) Additional requirements**

A local educational agency that receives a basic support payment under section 7703(b)(1) of this title shall also meet at least one of the following requirements:

(A) The number of children determined under section 7703(a)(1)(C) of this title for the agency for the preceding school year constituted at least 50 percent of the total student enrollment in the schools of the agency during the preceding school year.

(B) The number of children determined under subparagraphs (B) and (D)(i) of section 7703(a)(1) of this title for the agency for the preceding school year constituted at least 50 percent of the total student enrollment in the schools of the agency during the preceding school year.

###### **(3) Amount of payments**

###### **(A) Local educational agencies impacted by military dependent children**

The amount of a payment to each local educational agency described in this subsection that is impacted by military dependent children for a fiscal year shall be equal to—

(i)(II) 20 percent of the amount appropriated under section 7714(e) of this title for such fiscal year; divided by

(II) the total number of weighted student units of children described in subparagraphs (B) and (D)(i) of section 7703(a)(1) of this title for all local educational agencies described in this subsection (as calculated under section 7703(a)(2) of this title), including the number of weighted student units of such children attending a school facility described in section 7708(a) of this title if the Secretary does not provide assistance for the school facility under that section for the prior fiscal year; multiplied by

(ii) the total number of such weighted student units for the agency.

###### **(B) Local educational agencies impacted by children who reside on Indian lands**

The amount of a payment to each local educational agency described in this subsection that is impacted by children who reside on Indian lands for a fiscal year shall be equal to—

(i)(I) 20 percent of the amount appropriated under section 7714(e) of this title for such fiscal year; divided by

(II) the total number of weighted student units of children described in section 7703(a)(1)(C) of this title for all local educational agencies described in this subsection (as calculated under section 7703(a)(2) of this title); multiplied by

(ii) the total number of such weighted student units for the agency.

###### **(4) Use of funds**

Any local educational agency that receives funds under this subsection shall use such funds for construction, as defined in section 7713(3) of this title.

##### **(b) School facility emergency and modernization grants authorized**

###### **(1) In general**

From 60 percent of the amount appropriated for each fiscal year under section 7714(e) of this title, the Secretary—

(A) shall award emergency grants in accordance with this subsection to eligible local educational agencies to enable the agencies to carry out emergency repairs of school facilities; and

(B) shall award modernization grants in accordance with this subsection to eligible local educational agencies to enable the agencies to carry out the modernization of school facilities.

###### **(2) Priority**

In approving applications from local educational agencies for emergency grants and modernization grants under this subsection, the Secretary shall give priority to applications in accordance with the following:

(A) The Secretary shall first give priority to applications for emergency grants from local educational agencies that meet the requirements of paragraph (3)(A) and, among such applications for emergency grants, shall give priority to those applications of local educational agencies based on the severity of the emergency, as determined by the Secretary.

(B) The Secretary shall next give priority to applications for emergency grants from local educational agencies that meet the requirements of subparagraph (C) or (D) of paragraph (3) and, among such applications for emergency grants, shall give priority to those applications of local educational agencies based on the severity of the emergency, as determined by the Secretary.

(C) The Secretary shall next give priority to applications for modernization grants from local educational agencies that meet the requirements of paragraph (3)(B) and, among such applications for modernization grants, shall give priority to those applications of local educational agencies based on the severity of the need for modernization, as determined by the Secretary.

(D) The Secretary shall next give priority to applications for modernization grants from local educational agencies that meet the requirements of subparagraph (C) or (D) of paragraph (3) and, among such applications for modernization grants, shall give priority to those applications of local educational agencies based on the severity of the need for modernization, as determined by the Secretary.

### **(3) Eligibility requirements**

#### **(A) Emergency grants**

A local educational agency is eligible to receive an emergency grant under paragraph (2)(A) if—

(i) the agency (or in the case of a local educational agency that does not have the authority to tax or issue bonds, the agency's fiscal agent)—

(I) has no practical capacity to issue bonds;

(II) has minimal capacity to issue bonds and is at not less than 75 percent of the agency's limit of bonded indebtedness; or

(III) does not meet the requirements of subclauses (I) and (II) but is eligible to receive funds under section 7703(b)(2) of this title for the fiscal year; and

(ii) the agency is eligible to receive assistance under subsection (a) of this section for the fiscal year and has a school facility emergency, as determined by the Secretary, that poses a health or safety hazard to the students and school personnel assigned to the school facility.

#### **(B) Modernization grants**

A local educational agency is eligible to receive a modernization grant under paragraph (2)(C) if—

(i) the agency is eligible to receive assistance under this subchapter for the fiscal year;

(ii) the agency (or in the case of a local educational agency that does not have the authority to tax or issue bonds, the agency's fiscal agent) meets the requirements of subclause (I), (II), or (III) of subparagraph (A)(i); and

(iii) the agency has facility needs resulting from the presence of the Federal Gov-

ernment, such as the enrollment of federally connected children, the presence of tax-exempt Federal property, or an increase in enrollment due to the expansion of Federal activities, housing privatization, or the acquisition of Federal property.

#### **(C) Additional eligibility for emergency and modernization grants**

(i) A local educational agency is eligible to receive an emergency grant or a modernization grant under subparagraph (B) or (D) of paragraph (2), respectively, if the agency meets the following requirements:

(I) The agency receives a basic support payment under section 7703(b) of this title for the fiscal year and the agency meets at least one of the following requirements:

(aa) The number of children determined under section 7703(a)(1)(C) of this title for the agency for the preceding school year constituted at least 40 percent of the total student enrollment in the schools of the agency during the preceding school year.

(bb) The number of children determined under subparagraphs (B) and (D)(i) of section 7703(a)(1) of this title for the agency for the preceding school year constituted at least 40 percent of the total student enrollment in the schools of the agency during the preceding school year.

(II) The agency (or in the case of a local educational agency that does not have the authority to tax or issue bonds, the agency's fiscal agent) is at not less than 75 percent of the agency's limit of bonded indebtedness.

(III) The agency has an assessed value of real property per student that may be taxed for school purposes that is less than the average of the assessed value of real property per student that may be taxed for school purposes in the State in which the local educational agency is located.

(ii) A local educational agency is also eligible to receive a modernization grant under this subparagraph if the agency is eligible to receive assistance under section 7702 of this title for the fiscal year and meets the requirements of subclauses (II) and (III) of clause (i).

#### **(D) Special rule**

##### **(i) In general**

Any school described in clause (ii) that desires to receive an emergency grant or a modernization grant under subparagraph (B) or (D) of paragraph (2), respectively, shall, except as provided in the following sentence, submit an application in accordance with paragraph (6), and shall otherwise be treated as a local educational agency for the purpose of this subsection. The school shall submit an application for the grant to the local educational agency of such school and the agency shall submit the application on behalf of the school to the Secretary.

**(ii) School described**

A school described in this clause is a school that meets the following requirements:

(I) The school is located within the geographic boundaries of a local educational agency that does not meet the applicable eligibility requirements under subparagraph (A), (B), or (C) for a grant under this subsection.

(II) The school meets at least one of the following requirements:

(aa) The number of children determined under section 7703(a)(1)(C) of this title for the school for the preceding school year constituted at least 40 percent of the total student enrollment in the school during the preceding school year.

(bb) The number of children determined under subparagraphs (B) and (D)(i) of section 7703(a)(1) of this title for the school for the preceding school year constituted at least 40 percent of the total student enrollment in the school during the preceding school year.

(III) The school is located within the geographic boundaries of a local educational agency that meets the requirements of subclauses (II) and (III) of subparagraph (C)(i).

**(E) Rule of construction**

For purposes of subparagraph (A)(i), a local educational agency—

(i) has no practical capacity to issue bonds if the total assessed value of real property that may be taxed for school purposes is less than \$25,000,000; and

(ii) has minimal capacity to issue bonds if the total assessed value of real property that may be taxed for school purposes is at least \$25,000,000 but not more than \$50,000,000.

**(4) Award criteria**

In awarding emergency grants and modernization grants under this subsection, the Secretary shall consider the following factors:

(A) The ability of the local educational agency to respond to the emergency, or to pay for the modernization project, as the case may be, as measured by—

(i) the agency's level of bonded indebtedness;

(ii) the assessed value of real property per student that may be taxed for school purposes compared to the average of the assessed value of real property per student that may be taxed for school purposes in the State in which the agency is located;

(iii) the agency's total tax rate for school purposes (or, if applicable, for capital expenditures) compared to the average total tax rate for school purposes (or the average capital expenditure tax rate, if applicable) in the State in which the agency is located; and

(iv) funds that are available to the agency, from any other source, including sub-

section (a) of this section, that may be used for capital expenditures.

(B) The percentage of property in the agency that is nontaxable due to the presence of the Federal Government.

(C) The number and percentages of children described in subparagraphs (A), (B), (C), and (D) of section 7703(a)(1) of this title served in the school facility with the emergency or served in the school facility proposed for modernization, as the case may be.

(D) In the case of an emergency grant, the severity of the emergency, as measured by the threat that the condition of the school facility poses to the health, safety, and well-being of students.

(E) In the case of a modernization grant—

(i) the severity of the need for modernization, as measured by such factors as—

(I) overcrowding, as evidenced by the use of portable classrooms, or the potential for future overcrowding because of increased enrollment; or

(II) the agency's inability to utilize technology or offer a curriculum in accordance with contemporary State standards due to the physical limitations of the current school facility; and

(ii) the age of the school facility proposed for modernization.

**(5) Other award provisions****(A) General provisions****(i) Limitations on amount of funds****(I) In general**

The amount of funds provided under an emergency grant or a modernization grant awarded under this subsection to a local educational agency that meets the requirements of subclause (II) or (III) of paragraph (3)(A)(i) for purposes of eligibility under subparagraph (A) or (B) of paragraph (3) or that meets the requirements of clause (i) or (ii) of paragraph (3)(C) for purposes of eligibility under such paragraph (3)(C), or to a school that is eligible under paragraph (3)(D)—

(aa) shall not exceed 50 percent of the total cost of the project to be assisted under this subsection; and

(bb) shall not exceed \$4,000,000 during any 4-year period.

**(II) In-kind contributions**

A local educational agency may use in-kind contributions to meet the matching requirement of subclause (I)(aa).

**(ii) Prohibitions on use of funds**

A local educational agency may not use funds provided under an emergency grant or modernization grant awarded under this subsection for—

(I) a project for a school facility for which the agency does not have full title or other interest;

(II) stadiums or other school facilities that are primarily used for athletic contests, exhibitions, or other events for

which admission is charged to the general public; or

(III) the acquisition of real property.

**(iii) Supplement, not supplant**

A local educational agency shall use funds provided under an emergency grant or modernization grant awarded under this subsection only to supplement the amount of funds that would, in the absence of the Federal funds provided under the grant, be made available from non-Federal sources to carry out emergency repairs of school facilities or to carry out the modernization of school facilities, as the case may be, and not to supplant such funds.

**(iv) Maintenance costs**

Nothing in this subsection shall be construed to authorize the payment of maintenance costs in connection with any school facility modernized in whole or in part with Federal funds provided under this subsection.

**(v) Environmental safeguards**

All projects carried out with Federal funds provided under this subsection shall comply with all relevant Federal, State, and local environmental laws and regulations.

**(vi) Carry-over of certain applications**

A local educational agency that applies for an emergency grant or a modernization grant under this subsection for a fiscal year and does not receive the grant for the fiscal year shall have the application for the grant considered for the following fiscal year, subject to the priority requirements of paragraph (2) and the award criteria requirements of paragraph (4).

**(B) Emergency grants; prohibition on use of funds**

A local educational agency that is awarded an emergency grant under this subsection may not use amounts under the grant for the complete or partial replacement of an existing school facility unless such replacement is less expensive or more cost-effective than correcting the identified emergency.

**(6) Application**

A local educational agency that desires to receive an emergency grant or a modernization grant under this subsection shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may require. Each application shall contain the following:

(A) A description of how the local educational agency meets the award criteria under paragraph (4), including the information described in clauses (i) through (iv) of paragraph (4)(A) and subparagraphs (B) and (C) of paragraph (4).

(B) In the case of an application for an emergency grant—

(i) a description of the school facility deficiency that poses a health or safety hazard to the occupants of the facility and a description of how the deficiency will be repaired; and

(ii) a signed statement from an appropriate local official certifying that a deficiency in the school facility threatens the health or safety of the occupants of the facility or that prevents the use of all or a portion of the building.

(C) In the case of an application for a modernization grant—

(i) an explanation of the need for the school facility modernization project;

(ii) the date on which original construction of the facility to be modernized was completed;

(iii) a listing of the school facilities to be modernized, including the number and percentage of children determined under section 7703(a)(1) of this title in average daily attendance in each school facility; and

(iv) a description of the ownership of the property on which the current school facility is located or on which the planned school facility will be located.

(D) A description of the project for which a grant under this subsection will be used, including a cost estimate for the project.

(E) A description of the interest in, or authority over, the school facility involved, such as an ownership interest or a lease arrangement.

(F) Such other information and assurances as the Secretary may reasonably require.

**(7) Report**

**(A) In general**

Not later than January 1 of each year, the Secretary shall prepare and submit to the appropriate congressional committees a report that contains a justification for each grant awarded under this subsection for the prior fiscal year.

**(B) Definition**

In this paragraph, the term “appropriate congressional committees” means—

(i) the Committee on Appropriations and the Committee on Education and the Workforce of the House of Representatives; and

(ii) the Committee on Appropriations and the Committee on Health, Education, Labor, and Pensions of the Senate.

(Pub. L. 89-10, title VIII, §8007, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3763; amended Pub. L. 104-134, title I, §101(d) [title III, §306(b)], Apr. 26, 1996, 110 Stat. 1321-211, 1321-236; renumbered title I, Pub. L. 104-140, §1(a), May 2, 1996, 110 Stat. 1327; Pub. L. 106-398, §1 [[div. A], title XVIII, §1811], Oct. 30, 2000, 114 Stat. 1654, 1654A-383; Pub. L. 107-110, title VIII, §803, Jan. 8, 2002, 115 Stat. 1950.)

AMENDMENTS

2002—Subsec. (b). Pub. L. 107-110 amended heading and text generally, reorganizing and revising provisions relating to emergency and modernization grants.

2000—Pub. L. 106-398 amended section generally. Prior to amendment, section consisted of subsecs. (a) to (c) authorizing payments to certain local educational agencies for construction.

1996—Subsec. (a)(2)(B). Pub. L. 104-134 struck out “and in which the agency at any 2 times during the

four fiscal years preceding October 20, 1994, was denied by a vote of the agency's eligible voters a bond referendum for the purposes of school construction or renovation" before semicolon at end.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-110 effective Jan. 8, 2002, and effective with respect to appropriations for use under this subchapter for fiscal year 2002, see section 5 of Pub. L. 107-110, set out as an Effective Date note under section 6301 of this title.

**§ 7708. Facilities**

**(a) Current facilities**

From the amount appropriated for any fiscal year under section 7714(f) of this title, the Secretary may continue to provide assistance for school facilities that were supported by the Secretary under section 10 of the Act of September 23, 1950 (Public Law 815, 81st Congress) (as such Act was in effect on the day preceding October 20, 1994).

**(b) Transfer of facilities**

**(1) In general**

The Secretary shall, as soon as practicable, transfer to the appropriate local educational agency or another appropriate entity all the right, title, and interest of the United States in and to each facility provided under section 10 of the Act of September 23, 1950<sup>1</sup> (Public Law 815, 81st Congress), or under section 204 or 310 of the Act of September 30, 1950<sup>1</sup> (Public Law 874, 81st Congress) (as such Acts were in effect on January 1, 1958).

**(2) Other requirements**

Any such transfer shall be without charge to such agency or entity, and prior to such transfer, the transfer shall be consented to by the local educational agency or other appropriate entity, and may be made on such terms and conditions as the Secretary deems appropriate to carry out the purposes of this subchapter.

(Pub. L. 89-10, title VIII, § 8008, as added Pub. L. 103-382, title I, § 101, Oct. 20, 1994, 108 Stat. 3764.)

REFERENCES IN TEXT

Section 10 of the Act of September 23, 1950 (Public Law 815, 81st Congress) (as such Act was in effect on the day preceding October 20, 1994), referred to in subsec. (a), means section 10 of act Sept. 23, 1950, ch. 995, which was classified to section 640 of this title prior to repeal by Pub. L. 103-382, title III, § 331(a), Oct. 20, 1994, 108 Stat. 3965.

Section 10 of the Act of September 23, 1950 (Public Law 815, 81st Congress) (as such Act was in effect on January 1, 1958), referred to in subsec. (b)(1), probably means section 10 of act Sept. 23, 1950, ch. 995, as added by Pub. L. 85-620, title I, § 101, Aug. 12, 1958, 72 Stat. 553, as amended, which was classified to section 640 of this title prior to repeal by Pub. L. 103-382, title III, § 331(a), Oct. 20, 1994, 108 Stat. 3965. The act Sept. 23, 1950, did not contain a section 10 on Jan. 1, 1958.

Sections 204 and 310 of the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such Act was in effect on January 1, 1958), referred to in subsec. (b)(1), probably mean sections 204 and 310 of act Sept. 23, 1950, ch. 995, which were classified to sections 274 and 300, respectively, of this title prior to the general amendment of that Act by Pub. L. 85-620, Aug. 12, 1958, 72 Stat. 548. The act Sept. 30, 1950, did not contain a section 204 or 310 on Jan. 1, 1958.

<sup>1</sup> See References in Text note below.

**§ 7709. State consideration of payments in providing State aid**

**(a) General prohibition**

Except as provided in subsection (b) of this section, a State may not—

(1) consider payments under this subchapter in determining for any fiscal year—

(A) the eligibility of a local educational agency for State aid for free public education; or

(B) the amount of such aid; or

(2) make such aid available to local educational agencies in a manner that results in less State aid to any local educational agency that is eligible for such payment than such agency would receive if such agency were not so eligible.

**(b) State equalization plans**

**(1) In general**

A State may reduce State aid to a local educational agency that receives a payment under section 7702 or 7703(b) of this title (except the amount calculated in excess of 1.0 under section 7703(a)(2)(B) of this title and, with respect to a local educational agency that receives a payment under section 7703(b)(2) of this title, the amount in excess of the amount that the agency would receive if the agency were deemed to be an agency eligible to receive a payment under section 7703(b)(1) of this title and not section 7703(b)(2) of this title) for any fiscal year if the Secretary determines, and certifies under subsection (c)(3)(A) of this section, that the State has in effect a program of State aid that equalizes expenditures for free public education among local educational agencies in the State.

**(2) Computation**

**(A) In general**

For purposes of paragraph (1), a program of State aid equalizes expenditures among local educational agencies if, in the second fiscal year preceding the fiscal year for which the determination is made, the amount of per-pupil expenditures made by, or per-pupil revenues available to, the local educational agency in the State with the highest such per-pupil expenditures or revenues did not exceed the amount of such per-pupil expenditures made by, or per-pupil revenues available to, the local educational agency in the State with the lowest such expenditures or revenues by more than 25 percent.

**(B) Other factors**

In making a determination under this subsection, the Secretary shall—

(i) disregard local educational agencies with per-pupil expenditures or revenues above the 95th percentile or below the 5th percentile of such expenditures or revenues in the State; and

(ii) take into account the extent to which a program of State aid reflects the additional cost of providing free public education in particular types of local educational agencies, such as those that are geographically isolated, or to particular

types of students, such as children with disabilities.

**(3) Exception**

Notwithstanding paragraph (2), if the Secretary determines that the State has substantially revised its program of State aid, the Secretary may certify such program for any fiscal year only if—

(A) the Secretary determines, on the basis of projected data, that the State's program will meet the disparity standard described in paragraph (2) for the fiscal year for which the determination is made; and

(B) the State provides an assurance to the Secretary that, if final data do not demonstrate that the State's program met such standard for the fiscal year for which the determination is made, the State will pay to each affected local educational agency the amount by which the State reduced State aid to the local educational agency.

**(c) Procedures for review of State equalization plans**

**(1) Written notice**

**(A) In general**

Any State that wishes to consider payments described in subsection (b)(1) of this section in providing State aid to local educational agencies shall submit to the Secretary, not later than 120 days before the beginning of the State's fiscal year, a written notice of such State's intention to do so.

**(B) Contents**

Such notice shall be in the form and contain the information the Secretary requires, including evidence that the State has notified each local educational agency in the State of such State's intention to consider such payments in providing State aid.

**(2) Opportunity to present views**

Before making a determination under subsection (b) of this section, the Secretary shall afford the State, and local educational agencies in the State, an opportunity to present their views.

**(3) Qualification procedures**

If the Secretary determines that a program of State aid qualifies under subsection (b) of this section, the Secretary shall—

(A) certify the program and so notify the State; and

(B) afford an opportunity for a hearing, in accordance with section 7711(a) of this title, to any local educational agency adversely affected by such certification.

**(4) Nonqualification procedures**

If the Secretary determines that a program of State aid does not qualify under subsection (b) of this section, the Secretary shall—

(A) so notify the State; and

(B) afford an opportunity for a hearing, in accordance with section 7711(a) of this title, to the State, and to any local educational agency adversely affected by such determination.

**(d) Treatment of State aid**

**(1) In general**

If a State has in effect a program of State aid for free public education for any fiscal year, which is designed to equalize expenditures for free public education among the local educational agencies of that State, payments under this subchapter for any fiscal year may be taken into consideration by such State in determining the relative—

(A) financial resources available to local educational agencies in that State; and

(B) financial need of such agencies for the provision of free public education for children served by such agency, except that a State may consider as local resources funds received under this subchapter only in proportion to the share that local tax revenues covered under a State equalization program are of total local tax revenues.

**(2) Prohibition**

A State may not take into consideration payments under this subchapter before such State's program of State aid has been certified by the Secretary under subsection (c)(3) of this section.

**(e) Remedies for State violations**

**(1) In general**

The Secretary or any aggrieved local educational agency may, not earlier than 150 days after an adverse determination by the Secretary against a State for violation of subsections (a) or (d)(2) of this section or for failure to carry out an assurance under subsection (b)(3)(B) of this section, and if an administrative proceeding has not been concluded within such time, bring an action in a United States district court against such State for such violations or failure.

**(2) Immunity**

A State shall not be immune under the 11th amendment to the Constitution of the United States from an action described in paragraph (1).

**(3) Relief**

The court shall grant such relief as the court determines is appropriate.

(Pub. L. 89-10, title VIII, §8009, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3764; amended Pub. L. 104-195, §10, Sept. 16, 1996, 110 Stat. 2384; Pub. L. 106-398, §1 [[div. A], title XVIII, §1812], Oct. 30, 2000, 114 Stat. 1654, 1654A-386; Pub. L. 107-110, title VIII, §804, Jan. 8, 2002, 115 Stat. 1956.)

AMENDMENTS

2002—Subsec. (b)(1). Pub. L. 107-110 inserted “and, with respect to a local educational agency that receives a payment under section 7703(b)(2) of this title, the amount in excess of the amount that the agency would receive if the agency were deemed to be an agency eligible to receive a payment under section 7703(b)(1) of this title and not section 7703(b)(2) of this title” after “section 7703(a)(2)(B) of this title”.

2000—Subsec. (a)(1). Pub. L. 106-398, §1 [[div. A], title XVIII, §1812(1)], struck out “or under the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such Act was in effect on the day preceding October 20,

1994)” after “under this subchapter” in introductory provisions.

Subsec. (b)(1). Pub. L. 106-398, §1 [[div. A], title XVIII, §1812(2)], amended heading and text of par. (1) generally. Prior to amendment, text read as follows: “A State may reduce State aid to a local educational agency that receives a payment under section 7702 or 7703(b) of this title (except the amount calculated in excess of 1.0 under subparagraph (B) of section 7703(a)(2) of this title) or under the Act of September 30, 1950 (Public Law 874, 81st Congress) as such Act was in effect on the day preceding October 20, 1994 (other than an increase in payments described in paragraphs (2)(B), (2)(C), (2)(D), or (3)(B)(ii) of section 3(d) of such Act of September 30, 1950) for any fiscal year if the Secretary determines, and certifies under subsection (c)(3)(A) of this section, that such State has in effect a program of State aid that equalizes expenditures for free public education among local educational agencies in such State.”

Subsec. (d). Pub. L. 106-398, §1 [[div. A], title XVIII, §1812(3)], struck out “or under the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such Act was in effect on the day preceding October 20, 1994)” after “under this subchapter” wherever appearing.

1996—Subsec. (b)(2)(A). Pub. L. 104-195 substituted “more than 25 percent” for “more than—

- “(i) 25 percent for fiscal year 1995, 1996, or 1997; and
- “(ii) 20 percent for fiscal year 1998 or 1999”.

#### EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-110 effective Jan. 8, 2002, and effective with respect to appropriations for use under this subchapter for fiscal year 2002, see section 5 of Pub. L. 107-110, set out as an Effective Date note under section 6301 of this title.

### § 7710. Federal administration

#### (a) Payments in whole dollar amounts

The Secretary shall round any payments under this subchapter to the nearest whole dollar amount.

#### (b) Other agencies

Each Federal agency administering Federal property on which children reside, and each agency principally responsible for an activity that may occasion assistance under this subchapter, shall, to the maximum extent practicable, comply with requests of the Secretary for information the Secretary may require to carry out this subchapter.

#### (c) Special rules

##### (1) Certain children eligible under subparagraphs (A) and (G)(ii) of section 7703(a)(1)

(A) The Secretary shall treat as eligible under subparagraph (A) of section 7703(a)(1) of this title any child who would be eligible under such subparagraph except that the Federal property on which the child resides or on which the child’s parent is employed is not in the same State in which the child attends school, if such child meets the requirements of paragraph (3)<sup>1</sup> of this subsection.

(B) The Secretary shall treat as eligible under subparagraph (G) of section 7703(a)(1) of this title any child who would be eligible under such subparagraph except that such child does not meet the requirements of clause (ii) of such subparagraph, if such child meets the requirements of paragraph (3)<sup>1</sup> of this subsection.

<sup>1</sup> So in original. Probably should be paragraph “(2)”.

### (2) Requirements

A child meets the requirements of this paragraph if—

(A) such child resides—

- (i) in a State adjacent to the State in which the local educational agency serving the school such child attends is located; or
- (ii) with a parent employed on Federal property in a State adjacent to the State in which such agency is located;

(B) the schools of such agency are within a more reasonable commuting distance of such child’s home than the schools of the local educational agency that serves the school attendance area where such child resides;

(C) attending the schools of the local educational agency that serves the school attendance area where such child resides will impose a substantial hardship on such child;

(D) the State in which such child attends school provides funds for the education of such child on the same basis as all other public school children in the State, unless otherwise permitted under section 7709(b) of this title; and

(E) such agency received a payment for fiscal year 1999 under section 7703(b) of this title on behalf of children described in paragraph (1).

(Pub. L. 89-10, title VIII, §8010, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3767; amended Pub. L. 106-398, §1 [[div. A], title XVIII, §1813], Oct. 30, 2000, 114 Stat. 1654, 1654A-387.)

#### AMENDMENTS

2000—Subsec. (c)(1). Pub. L. 106-398, §1 [[div. A], title XVIII, §1813(1), (2)], redesignated par. (2) as (1) and struck out heading and text of former par. (1). Text read as follows: “Notwithstanding any other provision of law, for any fiscal year before fiscal year 1995, the Secretary shall treat as eligible under subsection (a) or (b) of section 3 of the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such subsection was in effect on the day preceding October 20, 1994), and shall forgive the obligation of a local educational agency to repay any amounts that such agency received under such section for such fiscal year based on, any child who would be eligible under such subsections except that such child does not meet the requirements of subsection (a)(1)(B) or (b)(2)(B), respectively, of such section 3, if such child meets the requirements of paragraph (3) of this subsection.”

Subsec. (c)(2). Pub. L. 106-398, §1 [[div. A], title XVIII, §1813(2)], redesignated par. (3) as (2). Former par. (2) redesignated (1).

Subsec. (c)(2)(D). Pub. L. 106-398, §1 [[div. A], title XVIII, §1813(3)(A)], struck out “section 5(d)(2) of the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such section was in effect on the day preceding October 20, 1994) or” after “otherwise permitted under”.

Subsec. (c)(2)(E). Pub. L. 106-398, §1 [[div. A], title XVIII, §1813(3)(B)], substituted “1999” for “1994”, struck out “(or such section’s predecessor authority)” after “section 7703(b) of this title”, and substituted “paragraph (1)” for “paragraph (2)”.

Subsec. (c)(3). Pub. L. 106-398, §1 [[div. A], title XVIII, §1813(2)], redesignated par. (3) as (2).

### § 7711. Administrative hearings and judicial review

#### (a) Administrative hearings

A local educational agency and a State that is adversely affected by any action of the Sec-

retary under this subchapter or under the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such Act was in effect on the day preceding October 20, 1994) shall be entitled to a hearing on such action in the same manner as if such agency were a person under chapter 5 of title 5 if the local educational agency or State, as the case may be, submits to the Secretary a request for the hearing not later than 60 days after the date of the action of the Secretary under this subchapter.

**(b) Judicial review of secretarial action**

**(1) In general**

A local educational agency or a State aggrieved by the Secretary's final decision following an agency proceeding under subsection (a) of this section may, within 30 working days (as determined by the local educational agency or State) after receiving notice of such decision, file with the United States court of appeals for the circuit in which such agency or State is located a petition for review of that action. The clerk of the court shall promptly transmit a copy of the petition to the Secretary. The Secretary shall then file in the court the record of the proceedings on which the Secretary's action was based, as provided in section 2112 of title 28.

**(2) Findings of fact**

The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Secretary to take further evidence. The Secretary may thereupon make new or modified findings of fact and may modify the Secretary's previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

**(3) Review**

The court shall have exclusive jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(Pub. L. 89-10, title VIII, § 8011, as added Pub. L. 103-382, title I, § 101, Oct. 20, 1994, 108 Stat. 3768; amended Pub. L. 106-398, § 1 [[div. A], title XVIII, § 1814(a)(1), (b)], Oct. 30, 2000, 114 Stat. 1654, 1654A-387.)

REFERENCES IN TEXT

Act of September 30, 1950 (Public Law 874, 81st Congress) (as such Act was in effect on the day preceding October 20, 1994), referred to in subsec. (a), is act Sept. 30, 1950, ch. 1124, 64 Stat. 1100, as amended, which was classified generally to chapter 13 (§ 236 et seq.) of this title prior to repeal by Pub. L. 103-382, title III, § 331(b), Oct. 20, 1994, 108 Stat. 3965. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106-398, § 1 [[div. A], title XVIII, § 1814(a)(1)], inserted “if the local educational agency or State, as the case may be, submits to the Secretary a request for the hearing not later than 60 days after the date of the action of the Secretary under this subchapter” before period at end.

Subsec. (b)(1). Pub. L. 106-398, § 1 [[div. A], title XVIII, § 1814(b)], substituted “30 working days (as determined by the local educational agency or State)” for “60 days”.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-398, § 1 [[div. A], title XVIII, § 1814(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A-387, provided that: “The amendment made by paragraph (1) [amending this section] shall apply with respect to an action of the Secretary under title VIII of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7701 et seq.) initiated on or after the date of the enactment of this Act [Oct. 30, 2000].”

**§ 7712. Forgiveness of overpayments**

Notwithstanding any other provision of law, the Secretary may forgive the obligation of a local educational agency to repay, in whole or in part, the amount of any overpayment received under this subchapter, or under this subchapter's predecessor authorities, if the Secretary determines that the overpayment was made as a result of an error made by—

(1) the Secretary; or

(2) the local educational agency and repayment of the full amount of the overpayment will result in an undue financial hardship on the agency and seriously harm the agency's educational program.

(Pub. L. 89-10, title VIII, § 8012, as added Pub. L. 103-382, title I, § 101, Oct. 20, 1994, 108 Stat. 3769; amended Pub. L. 106-398, § 1 [[div. A], title XVIII, § 1815], Oct. 30, 2000, 114 Stat. 1654, 1654A-387.)

AMENDMENTS

2000—Pub. L. 106-398 substituted “under this subchapter's predecessor authorities” for “under the Act of September 30, 1950 (Public Law 874, 81st Congress) or the Act of September 23, 1950 (Public Law 815, 81st Congress) (as such Acts were in effect on the day preceding October 20, 1994)” in introductory provisions.

**§ 7713. Definitions**

For purposes of this subchapter:

**(1) Armed Forces**

The term “Armed Forces” means the Army, Navy, Air Force, and Marine Corps.

**(2) Average per-pupil expenditure**

The term “average per-pupil expenditure” means—

(A) the aggregate current expenditures of all local educational agencies in the State; divided by

(B) the total number of children in average daily attendance for whom such agencies provided free public education.

**(3) Construction**

The term “construction” means—

(A) the preparation of drawings and specifications for school facilities;

(B) erecting, building, acquiring, altering, remodeling, repairing, or extending school facilities;

(C) inspecting and supervising the construction of school facilities; and

(D) debt service for such activities.

**(4) Current expenditures**

The term “current expenditures” means expenditures for free public education, including

expenditures for administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities, but does not include expenditures for community services, capital outlay, and debt service, or any expenditures made from funds awarded under part A of subchapter I of this chapter and subchapter VI of this chapter. The determination of whether an expenditure for the replacement of equipment is considered a current expenditure or a capital outlay shall be determined in accordance with generally accepted accounting principles as determined by the State.

**(5) Federal property**

**(A) In general**

Except as provided in subparagraphs (B) through (F), the term “Federal property” means real property that is not subject to taxation by any State or any political subdivision of a State due to Federal agreement, law, or policy, and that is—

(i) owned by the United States or leased by the United States from another entity;

(ii)(I) held in trust by the United States for individual Indians or Indian tribes;

(II) held by individual Indians or Indian tribes subject to restrictions on alienation imposed by the United States;

(III) conveyed at any time under the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.] to a Native individual, Native group, or village or regional corporation;

(IV) public land owned by the United States that is designated for the sole use and benefit of individual Indians or Indian tribes; or

(V) used for low-rent housing, as described in paragraph (10), that is located on land described in subclause (I), (II), (III), or (IV) of this clause or on land that met one of those descriptions immediately before such property’s use for such housing;

(iii)(I) part of a low-rent housing project assisted under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.];

(II) used to provide housing for homeless children at closed military installations pursuant to section 11411 of title 42; or

(III) used for affordable housing assisted under the Native American Housing Assistance and Self-Determination Act of 1996 [25 U.S.C. 4101 et seq.]; or

(iv) owned by a foreign government or by an international organization.

**(B) Schools providing flight training to members of Air Force**

The term “Federal property” includes, so long as not subject to taxation by any State or any political subdivision of a State, and whether or not that tax exemption is due to Federal agreement, law, or policy, any school providing flight training to members of the Air Force under contract with the Air Force at an airport owned by a State or political subdivision of a State.

**(C) Non-Federal easements, leases, licenses, permits, improvements, and certain other real property**

The term “Federal property” includes, whether or not subject to taxation by a State or a political subdivision of a State—

(i) any non-Federal easement, lease, license, permit, or other such interest in Federal property as otherwise described in this paragraph, but not including any non-Federal fee-simple interest;

(ii) any improvement on Federal property as otherwise described in this paragraph; and

(iii) real property that, immediately before its sale or transfer to a non-Federal party, was owned by the United States and otherwise qualified as Federal property described in this paragraph, but only for one year beyond the end of the fiscal year of such sale or transfer.

**(D) Certain Postal Service property and pipelines and utility lines**

Notwithstanding any other provision of this paragraph, the term “Federal property” does not include—

(i) any real property under the jurisdiction of the United States Postal Service that is used primarily for the provision of postal services; or

(ii) pipelines and utility lines.

**(E) Property with respect to which State or local tax revenues may not be expended, allocated, or available for free public education**

Notwithstanding any other provision of this paragraph, “Federal property” does not include any property on which children reside that is otherwise described in this paragraph if—

(i) no tax revenues of the State or of any political subdivision of the State may be expended for the free public education of children who reside on that Federal property; or

(ii) no tax revenues of the State are allocated or available for the free public education of such children.

**(F) Property located in the State of Oklahoma owned by Indian housing authority for low-income housing**

The term “Federal property” includes any real property located in the State of Oklahoma that—

(i) is owned by an Indian housing authority and used for low-income housing (including housing assisted under or authorized by the Native American Housing Assistance and Self-Determination Act of 1996 [25 U.S.C. 4101 et seq.]); and

(ii) at any time—

(I) was designated by treaty as tribal land; or

(II) satisfied the definition of Federal property under section 403(1)(A) of the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such Act was in effect on the day preceding October 20, 1994).

**(6) Free public education**

The term “free public education” means education that is provided—

(A) at public expense, under public supervision and direction, and without tuition charge; and

(B) as elementary or secondary education, as determined under State law, except that, notwithstanding State law, such term—

- (i) includes preschool education; and
- (ii) does not include any education provided beyond grade 12.

**(7) Indian lands**

The term “Indian lands” means any Federal property described in paragraph (5)(A)(ii) or (5)(F).

**(8) Local contribution percentage****(A) In general**

The term “local contribution percentage” means the percentage of current expenditures in the State derived from local and intermediate sources, as reported to and verified by the National Center for Education Statistics.

**(B) Hawaii and District of Columbia**

Notwithstanding subparagraph (A), the local contribution percentage for Hawaii and for the District of Columbia shall be the average local contribution percentage for the 50 States and the District of Columbia.

**(9) Local educational agency****(A) In general**

Except as provided in subparagraph (B), the term “local educational agency”—

(i) means a board of education or other legally constituted local school authority having administrative control and direction of free public education in a county, township, independent school district, or other school district; and

(ii) includes any State agency that directly operates and maintains facilities for providing free public education.

**(B) Exception**

The term “local educational agency” does not include any agency or school authority that the Secretary determines on a case-by-case basis—

(i) was constituted or reconstituted primarily for the purpose of receiving assistance under this subchapter or the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such Act was in effect on the day preceding October 20, 1994) or increasing the amount of such assistance; or

(ii) is not constituted or reconstituted for legitimate educational purposes.

**(10) Low-rent housing**

The term “low-rent housing” means housing located on property that is described in paragraph (5)(A)(iii).

**(11) Modernization**

The term “modernization” means repair, renovation, alteration, or construction, including—

(A) the concurrent installation of equipment; and

(B) the complete or partial replacement of an existing school facility, but only if such replacement is less expensive and more cost-effective than repair, renovation, or alteration of the school facility.

**(12) Revenue derived from local sources**

The term “revenue derived from local sources” means—

(A) revenue produced within the boundaries of a local educational agency and available to such agency for such agency’s use; or

(B) funds collected by another governmental unit, but distributed back to a local educational agency in the same proportion as such funds were collected as a local revenue source.

**(13) School facilities**

The term “school facilities” includes—

(A) classrooms and related facilities; and

(B) equipment, machinery, and utilities necessary or appropriate for school purposes.

(Pub. L. 89–10, title VIII, §8013, as added Pub. L. 103–382, title I, §101, Oct. 20, 1994, 108 Stat. 3769; amended Pub. L. 106–398, §1 [[div. A], title XVIII, §1816], Oct. 30, 2000, 114 Stat. 1654, 1654A–387; Pub. L. 106–400, §2, Oct. 30, 2000, 114 Stat. 1675.)

## REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in par. (5)(A)(ii)(III), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

The United States Housing Act of 1937, referred to in par. (5)(A)(iii)(I), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, §201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§1437 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

The Native American Housing Assistance and Self-Determination Act of 1996, referred to in par. (5)(A)(iii)(III), (F)(i), is Pub. L. 104–330, Oct. 26, 1996, 110 Stat. 4016, as amended, which is classified principally to chapter 43 (§4101 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of Title 25 and Tables.

Act of September 30, 1950 (Public Law 874, 81st Congress) (as such Act was in effect on the day preceding October 20, 1994), referred to in pars. (5)(F)(ii)(II) and (9)(B)(i), is act Sept. 30, 1950, ch. 1124, 64 Stat. 1100, as amended, which was classified generally to chapter 13 (§236 et seq.) of this title prior to repeal by Pub. L. 103–382, title III, §331(b), Oct. 20, 1994, 108 Stat. 3965. Section 403 of the Act was classified to section 244 of this title. For complete classification of this Act to the Code, see Tables.

## AMENDMENTS

2000—Par. (5)(A)(iii)(II). Pub. L. 106–400 made technical amendment to reference in original act which appears in text as reference to section 11411 of title 42.

Par. (5)(A)(iii)(III). Pub. L. 106–398, §1 [[div. A], title XVIII, §1816(1)(A)], added subcl. (III).

Par. (5)(F)(i). Pub. L. 106–398, §1 [[div. A], title XVIII, §1816(1)(B)], substituted “or authorized by the Native American Housing Assistance and Self-Determination

Act of 1996” for “the mutual help ownership opportunity program under section 202 of the United States Housing Act of 1937”.

Par. (8)(B). Pub. L. 106-398, § 1 [[div. A], title XVIII, § 1816(2)], substituted “the 50 States and the District of Columbia” for “all States”.

Pars. (11) to (13). Pub. L. 106-398, § 1 [[div. A], title XVIII, § 1816(3), (4)], added par. (11) and redesignated former pars. (11) and (12) as (12) and (13), respectively.

**§ 7713a. School facilities for children of Government employees and other residents in Indian reservations, national parks, and national monuments**

In order to facilitate the providing of educational opportunities for children of Government employees and other residents in Indian reservations, the national parks and national monuments the Secretary of the Interior is hereby authorized in his discretion to make available for elementary school purposes therein, without charge, space in Government-owned buildings, when such space may be available for such purposes without detriment to the official business of such Indian reservations, national parks and national monuments.

(July 16, 1940, ch. 629, 54 Stat. 761.)

CODIFICATION

Section was not enacted as part of the Elementary and Secondary Education Act of 1965, which comprises this chapter.

Section was formerly classified to section 244a of this title. Prior thereto, section was classified to section 76a of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, § 1, Sept. 6, 1966, 80 Stat. 378.

**§ 7714. Authorization of appropriations**

**(a) Payments for Federal acquisition of real property**

For the purpose of making payments under section 7702 of this title, there are authorized to be appropriated \$32,000,000 for fiscal year 2000 and such sums as may be necessary for each of the seven succeeding fiscal years.

**(b) Basic payments; payments for heavily impacted local educational agencies**

For the purpose of making payments under section 7703(b) of this title, there are authorized to be appropriated \$809,400,000 for fiscal year 2000 and such sums as may be necessary for each of the seven succeeding fiscal years.

**(c) Payments for children with disabilities**

For the purpose of making payments under section 7703(d) of this title, there are authorized to be appropriated \$50,000,000 for fiscal year 2000 and such sums as may be necessary for each of the seven succeeding fiscal years.

**(d) Repealed. Pub. L. 106-398, § 1 [[div. A], title XVIII, § 1817(d)], Oct. 30, 2000, 114 Stat. 1654, 1654A-388**

**(e) Construction**

For the purpose of carrying out section 7707 of this title, there are authorized to be appropriated \$10,052,000 for fiscal year 2000 and such sums as may be necessary for fiscal year 2001, \$150,000,000 for fiscal year 2002, and such sums as may be necessary for each of the five succeeding fiscal years.

**(f) Facilities maintenance**

For the purpose of carrying out section 7708 of this title, there are authorized to be appropriated \$5,000,000 for fiscal year 2000 and such sums as may be necessary for each of the seven succeeding fiscal years.

(Pub. L. 89-10, title VIII, § 8014, as added Pub. L. 103-382, title I, § 101, Oct. 20, 1994, 108 Stat. 3772; amended Pub. L. 105-78, title III, Nov. 13, 1997, 111 Stat. 1498; Pub. L. 106-398, § 1 [[div. A], title XVIII, § 1817], Oct. 30, 2000, 114 Stat. 1654, 1654A-388; Pub. L. 107-110, title VIII, § 805, Jan. 8, 2002, 115 Stat. 1956.)

AMENDMENTS

2002—Subsecs. (a) to (c). Pub. L. 107-110, § 805(a), substituted “seven succeeding fiscal years” for “three succeeding fiscal years”.

Subsec. (e). Pub. L. 107-110, § 805(b), substituted “for fiscal year 2001, \$150,000,000 for fiscal year 2002, and such sums as may be necessary for each of the five succeeding fiscal years” for “for each of the three succeeding fiscal years”.

Subsec. (f). Pub. L. 107-110, § 805(a), substituted “seven succeeding fiscal years” for “three succeeding fiscal years”.

Subsec. (g). Pub. L. 107-110, § 805(c), struck out heading and text of subsec. (g). Text read as follows: “For the purpose of carrying out section 7702(j) of this title there are authorized to be appropriated \$1,500,000 for fiscal year 2000 and such sums as may be necessary for each of the three succeeding fiscal years.”

2000—Subsec. (a). Pub. L. 106-398, § 1 [[div. A], title XVIII, § 1817(a)], substituted “\$32,000,000 for fiscal year 2000” for “\$16,750,000 for fiscal year 1995” and “three” for “four”.

Subsec. (b). Pub. L. 106-398, § 1 [[div. A], title XVIII, § 1817(b)], substituted “section 7703(b)” for “subsections (b) and (f) of section 7703”, “\$809,400,000 for fiscal year 2000” for “\$775,000,000 for fiscal year 1995”, and “three” for “four” and struck out “, of which 6 percent shall be available, until expended, for each such fiscal year to carry out section 7703(f) of this title” before period at end.

Subsec. (c). Pub. L. 106-398, § 1 [[div. A], title XVIII, § 1817(c)], substituted “\$50,000,000 for fiscal year 2000” for “\$45,000,000 for fiscal year 1995” and “three” for “four”.

Subsec. (d). Pub. L. 106-398, § 1 [[div. A], title XVIII, § 1817(d)], struck out heading and text of subsec. (d). Text read as follows: “For the purpose of making payments under section 7706 of this title, there are authorized to be appropriated \$2,000,000 for fiscal year 1995 and such sums as may be necessary for each of the four succeeding fiscal years.”

Subsec. (e). Pub. L. 106-398, § 1 [[div. A], title XVIII, § 1817(e)], substituted “\$10,052,000 for fiscal year 2000” for “\$25,000,000 for fiscal year 1995” and “three” for “four”.

Subsec. (f). Pub. L. 106-398, § 1 [[div. A], title XVIII, § 1817(f)], substituted “\$5,000,000 for fiscal year 2000” for “\$2,000,000 for fiscal year 1995” and “three” for “four”.

Subsec. (g). Pub. L. 106-398, § 1 [[div. A], title XVIII, § 1817(g)], amended heading and substituted “\$1,500,000 for fiscal year 2000 and such sums as may be necessary for each of the three succeeding fiscal years” for “such sums as are necessary beginning in fiscal year 1998 and for each succeeding fiscal year” in text.

1997—Subsec. (g). Pub. L. 105-78 added subsec. (g).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-110 effective Jan. 8, 2002, and effective with respect to appropriations for use under this subchapter for fiscal year 2002, see section 5 of Pub. L. 107-110, set out as an Effective Date note under section 6301 of this title.

## SUBCHAPTER IX—GENERAL PROVISIONS

## CODIFICATION

Title IX of the Elementary and Secondary Education Act of 1965, comprising this subchapter, was originally enacted as part of Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27, amended, and subsequently revised, restated, and amended by other public laws. Title IX is shown, herein, as having been added by Pub. L. 107-110, title IX, §901, Jan. 8, 2002, 115 Stat. 1956, without reference to earlier amendments because of the extensive revision of the title's provisions by Pub. L. 107-110. See Codification note preceding section 6301 of this title.

## PART A—DEFINITIONS

## § 7801. Definitions

Except as otherwise provided, in this chapter:

**(1) Average daily attendance****(A) In general**

Except as provided otherwise by State law or this paragraph, the term “average daily attendance” means—

- (i) the aggregate number of days of attendance of all students during a school year; divided by
- (ii) the number of days school is in session during that year.

**(B) Conversion**

The Secretary shall permit the conversion of average daily membership (or other similar data) to average daily attendance for local educational agencies in States that provide State aid to local educational agencies on the basis of average daily membership (or other similar data).

**(C) Special rule**

If the local educational agency in which a child resides makes a tuition or other payment for the free public education of the child in a school located in another school district, the Secretary shall, for the purpose of this chapter—

- (i) consider the child to be in attendance at a school of the agency making the payment; and
- (ii) not consider the child to be in attendance at a school of the agency receiving the payment.

**(D) Children with disabilities**

If a local educational agency makes a tuition payment to a private school or to a public school of another local educational agency for a child with a disability, as defined in section 1401 of this title, the Secretary shall, for the purpose of this chapter, consider the child to be in attendance at a school of the agency making the payment.

**(2) Average per-pupil expenditure**

The term “average per-pupil expenditure” means, in the case of a State or of the United States—

- (A) without regard to the source of funds—
  - (i) the aggregate current expenditures, during the third fiscal year preceding the fiscal year for which the determination is made (or, if satisfactory data for that year are not available, during the most recent

preceding fiscal year for which satisfactory data are available) of all local educational agencies in the State or, in the case of the United States, for all States (which, for the purpose of this paragraph, means the 50 States and the District of Columbia); plus

- (ii) any direct current expenditures by the State for the operation of those agencies; divided by

(B) the aggregate number of children in average daily attendance to whom those agencies provided free public education during that preceding year.

**(3) Beginning teacher**

The term “beginning teacher” means a teacher in a public school who has been teaching less than a total of three complete school years.

**(4) Child**

The term “child” means any person within the age limits for which the State provides free public education.

**(5) Child with a disability**

The term “child with a disability” has the same meaning given that term in section 1401 of this title.

**(6) Community-based organization**

The term “community-based organization” means a public or private nonprofit organization of demonstrated effectiveness that—

- (A) is representative of a community or significant segments of a community; and
- (B) provides educational or related services to individuals in the community.

**(7) Consolidated local application**

The term “consolidated local application” means an application submitted by a local educational agency pursuant to section 7845 of this title.

**(8) Consolidated local plan**

The term “consolidated local plan” means a plan submitted by a local educational agency pursuant to section 7845 of this title.

**(9) Consolidated State application**

The term “consolidated State application” means an application submitted by a State educational agency pursuant to section 7842 of this title.

**(10) Consolidated State plan**

The term “consolidated State plan” means a plan submitted by a State educational agency pursuant to section 7842 of this title.

**(11) Core academic subjects**

The term “core academic subjects” means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

**(12) County**

The term “county” means one of the divisions of a State used by the Secretary of Commerce in compiling and reporting data regarding counties.